Blenwel Agencies Pte Ltd v Tan Lee King
[2008] SGCA 3

Case Number : OS 1539/2007

Decision Date : 21 January 2008

Tribunal/Court : Court of Appeal

Coram : Andrew Phang Boon Leong JA; V K Rajah JA; Tan Lee Meng J

Counsel Name(s) : Tan Beng Hui Carolyn and Au Thye Chuen (Tan & Au LLP) for the applicant; Ng Yong Ern Raymond (Tan Lay Keng & Co) for the respondent

Parties : Blenwel Agencies Pte Ltd — Tan Lee King

Civil Procedure – Appeals – Leave – Applicant seeking leave to appeal against High Court decision refusing applicant leave to appeal against District Court decision – Final and conclusive nature of refusal of leave to appeal

Courts and Jurisdiction – Appeals – Right – Jurisdiction-conferring provision a crucial prerequisite to bringing an appeal

21 January 2008

Andrew Phang Boon Leong JA (delivering the grounds of decision of the court):

Introduction

1 Blenwel Agencies Pte Ltd ("the applicant") originally came before this court seeking leave to appeal against the decision of the High Court judge ("the Judge") in Originating Summons No 1230 of 2007 ("OS 1230/07") refusing it leave to appeal against a decision of the District Court (see *Blenwel Agencies Pte Ltd v Tan Lee King* [2007] SGHC 181 ("the GD")). However, before the hearing proper, the applicant sought leave from this court to discontinue the present originating summons ("OS 1539/07"). We granted the applicant such leave and ordered that the action be discontinued on condition that the applicant was not to make any further collateral attempts to pursue its claim against the respondent. We also ordered the applicant to pay the respondent's costs (inclusive of disbursements) fixed at $5,000 on an indemnity basis. We now give our reasons for so ruling. In particular, we wish to highlight that the original prayer in OS 1539/07 for leave to appeal was misconceived and bound to fail. This should serve as a timely reminder to counsel to avoid bringing such hopeless applications in future.

Background and procedural history

2 The applicant (the plaintiff in the originating Magistrate Court's suit) is an operator of car park facilities. The respondent (the defendant in the originating suit) had parked his car in a no-parking zone of a car park operated by the applicant, whereupon the latter clamped the wheel of the respondent's car. The respondent drove away with the wheel clamp and thereby damaged it. The applicant sued him for a sum of $600 for damage to the wheel clamp.

3 After a series of court proceedings, the precise details of which are unnecessary for present purposes, the matter ultimately ended up being referred to the Primary Dispute Resolution Centre ("PDRC") of the Subordinate Courts for mediation before a district judge ("the settlement judge"). The parties then agreed to resolve the matter in the following manner: the respondent was to pay the

applicant the sum of $3,000 in full and final settlement of the latter's claim in two equal instalments, with the first instalment to be paid by 1 February 2007 and the second, by 15 February 2007.

4 On 1 February 2007, the respondent attempted to make the first payment. However, that payment was not accepted by the applicant. It appeared to be because the applicant insisted on the respondent signing a joint press release, which the latter refused to do. Subsequently, on 8 February 2007, the parties returned to the PDRC to seek clarification of the settlement which they had entered into. The settlement judge confirmed that the respondent was not required to sign the joint press release. At this juncture, the respondent once again tendered payment, but to no avail. The applicant's version of the facts differed slightly in this regard. According to the applicant, the respondent was told to make the payment at its solicitors' office – and not at the PDRC – and this, the respondent did not do. For present purposes, however, this difference is immaterial.

5 The applicant then obtained, *ex parte*, a default judgment for $5,000, being the sum of $3,000 plus $2,000 in costs. The respondent in turn applied to set aside this default judgment. His application failed before a deputy registrar, but succeeded before a district judge ("the DJ"), who set aside the default judgment with costs fixed at $1,500. It was this decision of the DJ which the applicant was dissatisfied with.

6 After the DJ had set aside the default judgment in the respondent's favour, the respondent made payment of $1,500 to the applicant, being the settlement sum of $3,000 less the $1,500 in costs awarded in his favour. The applicant accepted payment of the said sum as part settlement of its various claims against the respondent, but reserved its right to appeal against the DJ's decision.

7 Dissatisfied with the DJ's decision, the applicant sought leave from the Subordinate Courts to appeal to the High Court against that decision pursuant to s 21(1) of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) ("the Act") read with O 55C r 2(1)(*a*) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the Rules"). Leave to appeal was, however, refused by the DJ.

8 The applicant did not let the matter rest there. It decided to take a second bite of the cherry by making an application to the High Court via OS 1230/07 for leave to appeal under s 21(1) of the Act read with O 55C r 2(1)(*b*) of the Rules. This application was heard by the Judge on 27 September 2007. The Judge was of the view that the DJ's decision should not be overturned and that the matter should not be allowed to proceed any further. Accordingly, the application in OS 1230/07 was dismissed (see the GD ([1] *supra*) at [5]).

9 Perhaps sensing that it had come to the end of the legal road, the applicant then tried to rely on what it thought was an alternative route that would allow it to proceed further. Relying on s 34(2)(*a*) of the Act read with O 56 r 3(1) of the Rules, it purported to make a further attempt to appeal against the Judge's decision in OS 1230/07 by filing Originating Summons No 1484 of 2007 ("OS 1484/07"), dated 5 October 2007, in the High Court for leave to appeal to the Court of Appeal against that decision. OS 1484/07 was placed before the Judge. After hearing the applicant, who was represented by Ms Carolyn Tan ("Ms Tan"), on 9 October 2007, the Judge dismissed OS 1484/07. He was of the view that there could be no leave to appeal against an order refusing leave to appeal as such a rule was "necessary to ensure finality in matters where the legislature ha[d] deemed it fit to prevent excessive litigation" (see the GD at [6]).

10 Seemingly undeterred, the applicant persisted by filing OS 1539/07 to seek leave to appeal to the Court of Appeal against the Judge's decision in OS 1230/07. The application was fixed for hearing on 12 November 2007.

11 That, however, was not the end of the matter. Just two working days before the date of the hearing, Ms Tan wrote to the Registrar of the Supreme Court giving notice of the applicant's decision to withdraw OS 1539/07. When the respondent came to know of this, he informed the court through his solicitors that he wished to be heard on the issue of costs and disbursements. In short, he was unwilling to consent to a withdrawal of OS 1539/07 without more. The *legal* effect of this was that the applicant needed to obtain the leave of the court to withdraw the application; the *practical* effect lay, quite clearly, in the issue of costs.

The statutory provisions

12 For ease of reference, it will be helpful to set out at this juncture the relevant provisions governing applications for leave to appeal to the High Court from decisions of the Subordinate Courts. Section 21 of the Act reads as follows:

> **Appeals from District and Magistrates' Courts**
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> **21.**—(1) Subject to the provisions of this Act or any other written law, an appeal shall lie to the High Court from a decision of a District Court or Magistrate's Court … in any civil cause or matter where the amount in dispute or the value of the subject-matter exceeds $50,000 … or with the leave of a District Court, a Magistrate's Court or the High Court if under that amount.

The corresponding provisions in the Rules, namely, O 55C r 2 and O 55D r 4, read as follows:

> **Leave to appeal (O. 55C, r. 2)**
>
> **2.**—(1) A party applying for leave under section 21(1) of the Supreme Court of Judicature Act (Chapter 322) to appeal against any judgment, order or decision of a District Judge in Chambers … must file his application —
>
> (*a*) to a District Judge in Chambers within 7 days of the judgment, order or decision; and
>
> (*b*) in the event leave is refused by the District Judge, to the High Court within 7 days of the refusal.
>
> ...
>
> **Time for appealing (O. 55D, r. 4)**
>
> **4.** …
>
> (2) A party applying for leave under section 21(1) of the Supreme Court of Judicature Act (Chapter 322) to appeal against an order made, or a judgment given, by a District Court must file his application —
>
> (*a*) to a District Court within 7 days of the judgment or order; and
>
> (*b*) in the event leave is refused by the District Court, to the High Court within 7 days of the refusal.
>
> (3) A party applying for leave under section 21(1) of the Supreme Court of Judicature Act (Chapter 322) to appeal against an order made, or a judgment given, by a Magistrate's Court

must file his application —

(*a*) to a Magistrate's Court within 7 days of the judgment or order; and

(*b*) in the event leave is refused by the Magistrate's Court, to the High Court within 7 days of the refusal.

Our decision

13 In view of the applicant's application for leave to discontinue OS 1539/07, it became strictly unnecessary for us to consider whether the original prayer for leave to appeal could even have got off the ground in the first place. However, although we gave the applicant leave to discontinue OS 1539/07, we were of the view that this originating summons should not have been taken out in the first place, and considered this an opportune time to state why the original prayer for leave to appeal was bound to fail. In this regard, we urge counsel to engage in serious contemplation before filing an application for leave to appeal since a failure to properly appreciate when such an application does or does not lie may result in adverse consequences in terms of costs (and not just for their clients).

14 The starting point of our analysis is the principle that where a legal decision cannot be appealed against as of right but requires express permission from a named authority before it can be appealed against, the decision of that authority as to whether or not to grant leave to appeal is final. The first case to establish this proposition was the House of Lords decision of *Lane v Esdaile* [1891] AC 210. That case has since been followed by a line of English authorities stretching over a hundred years to the present: see, for example, *In the matter of the Housing of the Working Classes Act, 1890* [1892] 1 QB 609, *Bland v Chief Supplementary Benefit Officer* [1983] 1 WLR 262 and *Kemper Reinsurance Co v Minister of Finance* [2000] 1 AC 1.

15 In the local context, this issue has also been previously addressed by this court in *SBS Transit Ltd v Koh Swee Ann* [2004] 3 SLR 365 ("*Koh Swee Ann*"). In *Koh Swee Ann*, the Court of Appeal had to consider the question of whether there was any further recourse available to the party seeking leave to appeal after both the Magistrate's Court and the High Court had refused to grant it leave to appeal against the Magistrate Court's decision. The unequivocal answer given by this court was in the negative.

16 Judith Prakash J, delivering the judgment of the court in *Koh Swee Ann*, stated (at [11]):

> The [English] cases … discussed the principle to be applied when an appeal against a decision could only be made with the leave of a particular authority … The English courts have consistently held that in such a situation the decision of the appointed authority is final and no further appeal may be brought against that decision. That common law principle applies in Singapore as it does in England. Thus, since s 21(1) of the Act read with O 55D r 4(3) of the [Rules of Court (Cap 322, R 5, 1997 Rev Ed)] has appointed the High Court as the authority with the final jurisdiction to grant or refuse leave to appeal against a magistrate's decision, there can be no further recourse after the High Court has adjudicated on the matter.

17 In our view, the position in relation to applications for leave to appeal against decisions of the *District Court* must be *the same*. Applying the same principles, since s 21(1) of the Act read with O 55D r 4(2)(*b*) (or, as the case may be, O 55C r (2)(1)(*b*)) of the Rules has appointed *the High Court* as the authority with the *final* say as to whether to grant or refuse leave to appeal against a district judge's decision, there can be no further recourse after the High Court has ruled on the

matter.

18 That the High Court is the authority with the final say as to whether to grant or refuse leave to appeal against a decision of the Subordinate Courts (whether a decision of the Magistrate's Court, as in *Koh Swee Ann*, *or* a decision of the District Court, as in the present case) is clear from the fact that s 21(1) of the Act as well as the Rules have, in the interests of justice and fairness, conferred *two* opportunities – *and two opportunities alone* – on a litigant who wishes to apply for leave to appeal against such a decision (referred to hereafter as a "would-be appellant" in these grounds of decision). The *first* opportunity consists of applying to *the relevant court of the Subordinate Courts* for leave to appeal against the decision. If such an application is refused, that is not the end to the matter because – and this constitutes the *second* opportunity – the would-be appellant can then proceed to apply to *the High Court* instead for leave to appeal. It will be immediately noticed that there is *no further court* other than the High Court to which the would-be appellant can apply *for leave to appeal*. This is eminently just and fair as the would-be appellant would, by that stage, already have had the opportunity to seek leave not only from the court against whose decision it is appealing against (*ie*, the relevant court of the Subordinate Courts, as just mentioned), but *also* (in the event that leave is not forthcoming from the court just mentioned) from the court to which the would-be appellant wishes to appeal (*ie*, the High Court). At the same time, there would be "a check to unnecessary or frivolous appeals" (*per* Lord Halsbury LC in *Lane v Esdaile* ([14] *supra*) at 212).

19 What then about OS 1539/07, which was brought under s 34(2) of the Act instead? Section 34 is found under Pt IVA of the Act, which governs the general civil jurisdiction of the Court of Appeal. Section 29A(1) of the Act provides that the civil jurisdiction of the Court of Appeal consists of "appeals from any judgment or order of the High Court in any civil cause or matter whether made in the exercise of its original or of its appellate jurisdiction, subject … to the provisions of this Act". The width of that section is, however, considerably narrowed by s 34 of the Act. To be more specific, s 34 of the Act sets out the matters that are either non-appealable or appealable only with the leave of the court: see s 34(1) (sub-paras (*a*)–(*e*) thereof) for the categories of cases in which no appeal whatsoever can be brought to the Court of Appeal, and s 34(2) (sub-paras (*a*)–(*e*) thereof) for the categories of cases in which an appeal can only be brought with the leave of the court.

20 It is thus abundantly clear that s 34 of the Act is intended to restrict appeals to the Court of Appeal. In a similar vein, s 21(1) of the Act is also designed as a mechanism to restrict appeals from the Subordinate Courts to the High Court in specified situations, *viz*, where the amount in dispute is below $50,000. In this regard, we find it necessary to reiterate the views expressed by this court in *Koh Swee Ann* ([15] *supra*) at [12], as follows:

> It would be inconsistent with the object of this statutory provision [*ie*, s 34 of the Act] as a mechanism restricting appeals to allow it to detract from the operation of s 21(1) [of the Act] which is another mechanism restricting appeals.

21 We respectfully agree with the reasoning of this court in *Koh Swee Ann* as set out in the preceding paragraph. In our view, the applicant's prayer in OS 1539/07 for leave to appeal to the Court of Appeal under s 34(2) of the Act was a disingenuous attempt to circumvent and override the common law principle identified at [14] above – an attempt which must be firmly rejected. Whether it realised it or not, the applicant was seeking to rely on s 34(2) of the Act to obtain leave to appeal in a situation where no appeal would otherwise have been possible. Quite clearly, that cannot be permitted.

22 It is also clear, in our view (and this is consistent with the analysis set out at [20] above which reconciles the respective roles and functions of ss 21(1) and 34 of the Act), that s 34 of the Act *is*

premised on the High Court having decided on the substantive matter or matters before it. *Then, and only then*, can the would-be appellant apply, in respect of matters falling within the purview of ss 34(2)(*a*)–34(2)(*e*) of the Act, to the High Court *or*, if the application before the High Court fails, to the Court of Appeal for leave to bring an appeal to this court on the *substantive matter or matters* decided by the High Court (see also O 56 r 3(1) of the Rules). It is clear, in our view, that s 34 is *not* intended to apply to situations (such as the present) where the High Court has refused leave to appeal against the decision of the Subordinate Courts and has therefore *not*, *ex hypothesi*, ruled on the substantive matter or matters in respect of which the would-be appellant is seeking *leave* to appeal. If, however, the High Court *has* so ruled (which, as just mentioned, was *not* the situation in the present case), then the would-be appellant may seek leave – but only in respect of matters falling within the purview of ss 34(2)(*a*)–34(2)(*e*) of the Act – from the Court of Appeal to bring an appeal against the High Court's decision in the event of an earlier unsuccessful application for such leave before *the High Court*.

23 This precept is part of a broader and more fundamental principle that has been emphasised ever so frequently – and one which we take pains to reiterate yet again. The Court of Appeal is a creature of statute and, hence, is only seised of the jurisdiction that has been conferred upon it by the relevant provisions in the legislation creating it: see, for example, *Microsoft Corporation v SM Summit Holdings* [2000] 2 SLR 137 at [17], *Abdullah bin A Rahman v PP* [1994] 3 SLR 129 at 132, [7] and *Ng Chye Huey v PP* [2007] 2 SLR 106 at [17]. A jurisdiction-conferring provision, whether derived from the Act or elsewhere, is a crucial prerequisite that a would-be appellant *must* satisfy so as to have, before this court, a legal basis upon which to canvass the substantive merits of his or her application (see the decision of this court in *Ng Chin Siau v How Kim Chuan* [2007] 4 SLR 809 at [42] for a similar expression of this principle in the context of arbitration proceedings generally).

24 If the would-be appellant's application is intended to constitute an appeal against the decision of a lower court, it can only be heard by the Court of Appeal if the would-be appellant possesses a legitimate right of appeal in the first place. In this connection, it is trite law that there is no inherent right to appeal from judicial determinations made by our courts: see, for example, the Straits Settlements Supreme Court decision of *Chop Sum Thye v Rex* [1933] MLJ 87 and the Malaysian Federal Court decision of *Kulasingam v Public Prosecutor* [1978] 2 MLJ 243. A right of appeal must, therefore, have its source in legislative authority: see, for example, *Knight Glenn Jeyasingam v PP* [1999] 3 SLR 362 at [13] and *Ting Sie Huong v State Attorney-General* [1985] 1 MLJ 431. As Lord Goddard CJ poignantly observed in the English decision of *R v West Kent Quarter Sessions Appeal Committee* [1951] 2 All ER 728 at 730:

> It is most elementary that no appeal from a court lies to any other court unless there is a statutory provision which gives a right to appeal. The decision of every court is final if it has jurisdiction, unless an appeal is given by statute.

25 Returning to the facts of the present case, once the Judge refused to grant the applicant *leave* to appeal against the DJ's decision, that was – and should have been – the end of the matter. The Judge was correct in finding, in respect of OS 1484/07, that he did not have the jurisdiction to give the applicant leave to appeal against his earlier decision in OS 1230/07 where he refused to grant the applicant leave to appeal. The fact that OS 1484/07 was filed under s 34(2) of the Act did not confer such jurisdiction on the Judge. As we indicated above, this court also did not have the jurisdiction to hear the prayer for leave to appeal in OS 1539/07.

26 In view of our finding that this court did not have the jurisdiction to hear OS 1539/07, the entire application was flawed *in limine*. Therefore, the applicant's application to discontinue this originating summons was, in the circumstances, the right and proper course of action to adopt.

Ms Tan had informed the court that the applicant was withdrawing OS 1539/07 "out of compassion for the [r]espondent". That may have indeed been the case; but we do not wish, nor do we find it necessary, to express any views on this particular point. Instead, what we found more relevant was Ms Tan's assurance that the applicant was not seeking to take any further action against the respondent. In this regard, we noted that Ms Tan had represented on the applicant's behalf that the applicant would not make any further collateral attempts to pursue this matter in future. Taking into account the applicant's undertaking and, more importantly, the fact that OS 1539/07 should not have been brought in the first place, we granted the applicant leave to discontinue this originating summons.

27 We must, however, also emphasise that the applicant could – and should – have sought the respondent's consent to discontinue OS 1539/07 far earlier than the stage at which it eventually attempted to do so. Its failure to seek such consent earlier resulted in wasted time and costs. By the time the applicant applied to withdraw OS 1539/07, the respondent' solicitors had already filed their skeletal arguments as well as a bundle of authorities, all of which turned out to be ultimately unnecessary. Given that OS 1539/07 was misconceived to begin with, coupled with the fact that the applicant sought to discontinue the matter so late in the day, we found it appropriate to order the applicant to pay the respondent costs on an indemnity basis.

Conclusion

28 In the premises, we granted the applicant leave to discontinue OS 1539/07 with an order that it pay costs on an indemnity basis fixed at $5,000, inclusive of disbursements, to the respondent.