

Telemedia Pacific Group Ltd v Credit Agricole (Suisse) SA (Yeh Mao-Yuan, third party)
[2013] SGHC 40

Case Number : Suit No 379 of 2012 (Registrar's Appeal No 17 of 2013)
Decision Date : 19 February 2013
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : John Wang Shing Chun and Eugene Leong Fu Sheng (RHTLaw Taylor Wessing LLP) for the appellant/third party; Benedict Teo Chun-Wei and Ng Sook Zhen (Drew & Napier LLC) for the respondent/defendant.
Parties : Telemedia Pacific Group Ltd — Credit Agricole (Suisse) SA (Yeh Mao-Yuan, third party)

Civil Procedure

19 February 2013

Judgment reserved

Choo Han Teck J:

1 In this action, the plaintiff, a company incorporated in the British Virgin Islands sued the defendant bank for breach of mandate in acting on the unauthorised signature of the third party. The defendant claimed that the third party was an authorised signatory. The thrust of the plaintiff's claim was that the defendant acted on the third party's unauthorised instructions, transferred 225 million shares in NexGen (which the plaintiff had deposited with the defendant) to parties not entitled to the shares.

2 The defendant joined the third party in this suit but the common position pleaded by the defendant and the third party was that the third party was an authorised signatory of the plaintiff. The defendant averred that the third party had represented himself to be an authorised signatory of the plaintiff. The defendant averred that in documents which it will rely upon at trial the third party had acknowledged that he was an authorised signatory. However, the defendant also averred that the third party had represented to the defendant's representative in October 2011 that one Hartanto knew that the third party was authorised to operate the plaintiff's account on his single signature. The third party applied for further and better particulars of the statement above and specifically sought the names of the defendant's representatives to whom the third party was alleged to have made the representation. In his written submission, Mr John Wang, counsel for the third party, reiterated that the third party "maintains that at all material times, he was an authorised signatory of the plaintiff's account, and was authorised to operate the plaintiff's account singly".

3 The assistant registrar dismissed the third party's application for the particulars sought and he appealed. Mr Wang relied on para 18/12/2 of the Singapore Civil Procedure 2013 ("the White Book") and quoted the following passage in his submission:

General—The requirement to give particulars reflects the overriding principle that the litigation between the parties, and particular the trial, should be conducted fairly, openly and without surprises...The function of particulars is accordingly:

(1) to inform the other side of the nature of the case that they have to meet...

(2) to prevent the other side from being taken by surprise at the trial...

(3) to enable the other side to know with what evidence they ought to be prepared and to prepare for trial.

Mr Wang then referred to *Sharikat Logistics Pte Ltd v Ong Boon Chuan* [2011] SGHC 196, a decision of this court and to paragraph 10 of that decision where I held as follows:

In the first category of particulars sought, the defendants in question referred to the allegations that TG Properties and TG Realty were companies under the control of the first and fourth defendants, and wanted the plaintiff to set out "all facts and circumstances relied upon by the plaintiff in alleging such control". This is a classic example of unnecessary particularisation. All the defendants need to do is to deny that there is such control or that if there was, to plead that the fact of such control was irrelevant to the case.

Mr Wang submitted that *Sharikat*, which was relied upon by Mr Benedict Teo, counsel for the defendant, was not reported and "is not even cited in the Singapore Civil Procedure 2013". Mr Wang further cited para 18/12/28 of the White Book, which states as follows:

(25) *Misrepresentation*—Particulars of any misrepresentation must be contained in the pleading. The state of claim must show the nature and extent of each alleged misrepresentation ... by whom *and to whom it was made* ... (*Seligmann v. Young* [1884] W.N. 93).

[emphasis added]

Mr Wang argued that when a plaintiff claims that a defendant had made an oral representation to him, he must tell that defendant the name of the person to whom the oral representation was made. He further argued that a defendant cannot be refused the identity of the person receiving the representation just because the defendant denies making the representation.

4 Paragraph 18/12/2 of the White Book quoted by Mr Wang was clearly an introductory description of the general function of pleadings. A litigation proceeds step by step, beginning with a letter-before-action, the writ and the statement of claim, the discovery and interrogatories, the affidavit of evidence-in-chief, and finally, the trial, which opens with the opening statement and the cross-examination of witnesses, the re-examination of those witnesses, and the closing address or submissions. Indeed, the general idea is to let the defendant know what the claim is so that he can plead his defence. That is the main test as to whether further and better particulars are required. *Sharikat* did not lay down any new law. It is an application of established practice and was concerned with the application of the procedure for further and better particulars. It was a reminder that pleadings should not be confused with discovery, interrogatories, and evidence. It is also important that the pleadings should not be prolix because the other procedures in the interlocutory stage and the trial itself will expand according to the size and nature of the pleadings. The aim of the interlocutory process is to ensure that the issues at trial are narrowed as much as possible so that the trial can be conducted expeditiously.

5 It is the cause of action with sufficient particulars for the defendant to plead his defence that must be pleaded. Only particulars without which the defendant is unable to plead his defence will be allowed. Thus every case will differ on the facts as to how much detail is required to meet the requirements of the cause of action and the sufficiency of particulars to enable a defendant to know what he has to plead in his defence. In the present case, Mr Wang's client clearly accepts that he was an authorised signatory for the plaintiff. The plaintiff's claim against the defendant depended on

the fact that he (the third party) was not so authorised. The defendant agrees with the third party. Indeed, the defendant need only plead that the third party was an authorised signatory, a fact confirmed by the third party and thus not in issue. Thus the identity of the person to whom the representation was made is not necessary for the third party's defence. The reference in the White Book that Mr Wang referred to (para 18/12/28) is a general proposition and applies to cases in which the representation and the truth it purports to bear are denied and thus are issues for trial as between the parties. Here, the truth that the representation purports to bear (that the third party was an authorised signatory) is not denied by the third party. Mr Teo submitted that if the third party wishes to know if he needed to adduce evidence in rebuttal on the assertion in question the place and time to do that would be at the time for serving interrogatories. Mr Wang argued that that cannot be the case because he would not be permitted to "ask for names of persons merely as being the witnesses whom the other party is going to call." He cited *Marriott v Chamberlain* [1887] 17 QBD 154 in support. As a matter of general principle, that would be right, but the defendant in *Marriott* was not merely asking for the names of witnesses. He was asking for the names of people forming substantial parts of material facts. In the present case, the names are not essential in the issue concerning the defendant and the third party. The names of the persons were not necessary for the third party to file its defence against the defendant in this case. I agree that should it become necessary for preparation for trial, the third party is entitled to serve interrogatories for the names of the persons concerned; but that is the next stage in the process.

6 For the reasons above, the appeal is dismissed. I will hear submissions on costs at a later date if parties are unable to agree costs.

Copyright © Government of Singapore.