Sinwa SS (HK) Co Ltd *v* Nordic International Ltd and others
[2014] SGHC 132

Case Number : Suit No 1166 of 2013 (Summons No 1544 of 2014)

Decision Date : 09 July 2014

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : June Lim (Fortis Law Corporation) and Andrew Ho (Engelin Teh Practice LLC) for the plaintiff; Joseph Tan and Joanna Poh (Legal Solutions LLC) for the second defendant.

Parties : Sinwa SS (HK) Co Ltd — Nordic International Ltd and others

Civil Procedure – Summary Judgment

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 108 of 2014 and Summons No 4987 of 2014 was dismissed by the Court of Appeal on 25 November 2014. See [2014] SGCA 63.]

9 July 2014

Choo Han Teck J:

1 This was the plaintiff's application for summary judgment. Its prayer under Summons No 1544 of 2014 read:

> Let all parties concerned attend before the Court on the date and time to be assigned for a hearing of an application by the Plaintiff for the following order(s):
>
> 1. Judgment be entered for the Plaintiff against the 1st and 2nd Defendants declaring that:
>
> a. The Plaintiff be at liberty to commence arbitration proceedings and/or any other proceedings, as may be deemed necessary, in the name and on behalf of the 1st Defendant against BGP GEOEXPLORER PTE LTD (RC No. 200515896M).
>
> b. The plaintiff be authorised to control the conduct of any such proceedings and/or any execution proceedings thereafter.
>
> 2. Costs.
>
> 3. Such further and/or other reliefs as this Honourable Court deems fit.

2 The plaintiff was a company incorporated in Hong Kong, in the business of marine supply and logistics. The second defendant, a Norwegian national, was habitually resident in Singapore. On 4 July 2007, Sinwa Limited, a company incorporated in Singapore, and the second defendant entered into a shareholders' agreement ("the Agreement") which set out the terms of the parties' joint venture involving the conversion of a fishing trawler into a seismic survey vessel ("the Vessel"). The first defendant, a company incorporated in the British Virgin Islands, was designated as the vehicle of this joint venture. The first defendant owned the Vessel. Pursuant to the Agreement, the second defendant, who originally owned all the shares in the first defendant, sold half his shares to Sinwa

Limited. On 28 August 2007, the rights and obligations of Sinwa Limited under the Agreement were novated to the plaintiff. The relevant portions of the Agreement are:

8.1 Parties agree that:-

8.1.1 all technical and economical matters relating to the operations and management of the Vessel, and/or matters related to the time charter party and/or matters related to the [third defendant] and end user TGSN, shall be solely decided by the directors appointed by [the second defendant] (whose decision shall be final);

8.1.2 all matters relating to the account and/or management and/or auditing of the accounts and books and financing of the Vessel and/or matters relating to the Credit Facilities shall be solely decided by the directors appointed by [Sinwa Limited] (whose decision shall be final); and

8.1.3 save as aforesaid, all other decisions in respect of any other matters shall carry the unanimous agreement of both parties.

…

11.1 For the purpose of this clause, a case of "deadlock" is deemed to have arisen where:-

11.1.1 a matter requiring the unanimous approval of the Board has been considered by a meeting of the Board and no resolution has been carried at such meeting of the Board in relation to the matter by reason of a failure by one or more director to vote in favour of such resolution; or

11.1.2 a matter requiring the unanimous approval of the shareholders has been considered by the Parties and the Parties have failed to approve such matter.

11.2 In the case of any deadlock arising in the circumstances referred to in clause 11.1 above, each shareholder shall within seven (7) days of such deadlock having arisen or becoming apparent, cause its appointees on the Board to prepare and circulate to a memorandum or other form of statement setting out their position on the matter in dispute and their reasons for adopting such a position. Each such memorandum or statement shall be considered by the representative of each Party then holding office who shall respectively use his reasonable endeavours to resolve such dispute. If they agree upon a resolution or disposition of the matter, they shall jointly execute a statement…

11.3 If a resolution or disposition is not agreed in accordance with the provisions of clause 11.2 above within thirty (30) days after delivery of the memorandum… then [the second defendant] may serve a written notice on [Sinwa Limited] in respect of the relevant matter requiring [Sinwa Limited] to sell its shares together with all its or their rights under any shareholders' loan to [the second defendant] at a price to be determined and certified by the auditors as being the fair value of the shares at the date of service of such notice based on the net asset value of [the first defendant] on such date…

…

16.2 All and any dispute arising out of or in connection with this Agreement, including any question regarding the existence, validity or termination, shall be referred to and finally resolved

> by arbitration at the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force at the commencement of the arbitration, which rules are deemed to be incorporated by reference in this clause.

In the light of the novation, all references to "Sinwa Limited" should be read as references to the plaintiff.

3 Meanwhile, in June 2007, the first defendant entered into a time charter with the third defendant for the employment of the Vessel. The time charter was for a fixed three-year period at a daily rate of US$37,000. Clause 17(a) of the time charter read:

> The Charterers shall have the option of subletting, assigning or loaning the Vessel to any person or company not competing with the Owners, subject to the Owners' prior approval which shall not be unreasonably withheld, upon giving notice in writing to the Owners, but the original Charterers shall always remain responsible to the Owners for due performance of the Charter Party…

The third defendant had, earlier in December 2006, entered into an agreement with TGS-NOPEC Geophysical Company SA ("TGS") to provide seismic acquisition services ("the Seismic Agreement").

4 Unbeknownst to the plaintiff, the second defendant had entered into an agreement with the third defendant, TGS and Nordic Maritime Pte Ltd ("NMPL") on 23 August 2008 to assign the time charter to a company called Nordic Geo Services Limited ("NGS"), a wholly-owned subsidiary of NMPL. The plaintiff alleged that the second defendant controlled NMPL. In addition to this agreement, the second defendant, the third defendant, NMPL, and TGS entered into a memorandum of understanding, under which the third defendant was to transfer to NMPL its rights and obligations in the time charter as well as in the Seismic Agreement. The plaintiff only became aware of this agreement and memorandum of understanding on 9 September 2008.

5 Shortly after, on 19 December 2008, TGS terminated the Seismic Agreement. The effect was that the Vessel was largely laid-up for the remainder of the three-year time charter period. The plaintiff took the view that, pursuant to cl 17(a) of the time charter, the third defendant was (notwithstanding the assignment to NGS) still liable to pay the outstanding charter fees. The plaintiff calculated the outstanding fees owing from the third defendant to the first defendant to have been US$29,411,379.57, inclusive of late interest.

6 In November 2009, the plaintiff, on behalf of the first defendant, commenced arbitration proceedings against the third defendant for the recovery of the outstanding fees ("BGP Arbitration"). The second defendant opposed this, and on 7 January 2010, applied to the High Court (Originating Summons 22 of 2010) to effectively restrain the BGP Arbitration. Justice Lai Siu Chiu found that the case turned on the interpretation of cll 8.1.1 and 8.1.2 of the Agreement (see *Morten Innhaug v Sinwa SS (HK) Co Ltd and others* [2011] SGHC 20 at [36]). She held that the matter of the assignment and memorandum of understanding did not fall strictly within either cl 8.1.1 or 8.1.2, and as such cl 8.1.3 came into play. The parties were obliged to come to a unanimous decision on the matter. If the parties could not agree, pursuant to cl 16.2, they were to proceed to arbitration. As such, she dismissed the second defendant's application.

7 Shortly after the decision of Justice Lai Siu Chiu, the third defendant applied to the High Court (Originating Summons 650 of 2011) seeking an order that the appointed arbitrator (in the BGP Arbitration) did not have jurisdiction to act as the plaintiff did not have the requisite authority to commence the arbitration proceedings. The High Court held in favour of the third defendant and

ordered that the arbitrator did not have jurisdiction. Consequently, the BGP Arbitration was discontinued.

8 On 24 October 2011, a board of directors' meeting of the first defendant was convened to discuss possible proceedings against the third defendant. The meeting ended in a deadlock. As such, on 9 January 2012, the second defendant commenced arbitration proceedings (Singapore International Arbitration Centre Arbitration No 4 of 2012) against the plaintiff, seeking to resolve this deadlock. The arbitration proceedings were to be held in two stages. First, the arbitrator would determine if there was a deadlock within meaning of the Agreement. Second, the price at which the second defendant was to buyout the plaintiff's share would be determined.

9 On 1 October 2013, a partial award was made. The arbitrator found that a deadlock had arisen, and that the plaintiff was to sell its shares to the second defendant at a price to be assessed (in the second stage of arbitration). Notwithstanding the decision of the arbitrator, the plaintiff continued to pursue its arbitration efforts (on behalf of the first defendant) against the third defendant. It was in this spirit that the plaintiff appeared before me on 11 June 2014 seeking summary judgment. Having understood that the partial award had already been made, and that the plaintiff was soon to sell its stake in the first defendant, I made no order, without prejudice to a fresh application.

10 Barring a breakdown in the ongoing arbitration proceedings between plaintiff and second defendant, the plaintiff would soon likely have neither any legal interest nor standing to pursue proceedings against the third defendant on behalf of the first defendant. In fact, the second stage of arbitration was already somewhat underway. When parties appeared before me, they informed me that the valuation process was due to be completed by 31 July 2014. It was never the plaintiff's case that the ongoing arbitration proceedings or valuation were unfair. In fact, the avenue remains open to the plaintiff to raise such arguments when it appears before the arbitrator for the second stage of proceedings. Notwithstanding that, instead of shutting the plaintiff out from the High Court, I gave it liberty to apply should it have better evidence and arguments than it produced before me. There is no order in this case upon which to appeal.

11 Nevertheless, the plaintiff has since appealed to the Court of Appeal.