United Engineers (Singapore) Pte Ltd v Lee Lip Hiong and Others
[2004] SGHC 153

Case Number : Suit 13/2004

Decision Date : 21 July 2004

Tribunal/Court : High Court

Coram : Joyce Low Wei Lin AR

Counsel Name(s) : Adrian Wong (Rajah & Tann) for the plaintiff; Foo Yuk Lin (Foo Chia Partnership) for the first defendant; H T Sam (H T Sam & Co) for the second and third defendants

Parties : United Engineers (Singapore) Pte Ltd — Lee Lip Hiong; Tan King Hiang; Sin Yong Contractor Pte Ltd

6 August 2004

AR Joyce Low:

1 These are applications by United Engineers (S) Private Ltd ('United Engineers') and Sin Yong Contractor Pte Ltd ('SYC') for extensions of time to file and serve their respective summonses for summary judgment under O 14 of the Rules of Court ('the Rules').

Facts and issues

2 United Engineers are in the business of general construction work. Lee Lip Hiong ('Lee') was their former engineering manager. His duties included acting on the company's behalf in negotiations and concluding contracts with subcontractors. Through Lee, United Engineers awarded contracts to Tan King Hiang and SYC.

3 On 6 January 2004, United Engineers commenced this action against Lee, Tan King Hiang and SYC. They sought to recover secret commissions allegedly paid to Lee by Tan King Hiang to secure contracts for himself and subsequently, SYC. In turn, SYC counterclaimed against United Engineers for payment for works done on their contracts. The pleadings in the action were deemed to be closed on 9 March 2004. Pursuant to O 14 r 14 of the Rules, the last day for the filing of a summons under that order was 14 days after the pleadings in the action were deemed to be closed, *ie* 23 March 2004. On that day, United Engineers took out the present application to extend time to file and serve a summons under O 14 r 1. Two days later, SYC took out a similar application to extend time to file and serve an application under O 14 for summary judgment on their counterclaim against United Engineers.

4 Mr Adrian Wong and Mr H T Sam, who acted for United Engineers and SYC respectively, argued that the court has the power to grant the extension of time that they sought. Between them, they raised three potential sources of power. They are 18(2) read with paragraph 7 of the First Schedule of the Supreme Court of Judicature Act ('SCJA'), O 3 r 4(1) of the Rules and the inherent powers of the court. Both of them submitted that the court should exercise its power to extend time in the circumstances of their cases. Lee opposed United Engineers' application. Parties accepted that, with respect to whether the court had the power to extend time, SYC's application would stand or fall by United Engineers' application.

Express power to extend time

5 Section 18(2) of the SCJA provides that the High Court shall have the powers set out in the

First Schedule. Paragraph 7 of that schedule reads:

> Power to enlarge or abridge the time prescribed by any written law for doing any act or taking any proceeding, whether the application therefore is made before or after the expiration of the time prescribed, *but this provision shall be without prejudice to any written law relating to limitation* (emphasis added).

6 It is not disputed that paragraph 7 gives the court a wide and general power to extend time for the doing of any act although the power does not extend to affecting any written law relating to limitation. However, the parties disagreed on whether O 14 r 14 was a "written law relating to limitation" and therefore whether paragraph 7 was applicable in the present case. The rule reads:

> No summons under this Order shall be filed more than 14 days after the pleadings in the action are deemed closed.

7 Mr Wong submitted that the rule was not a "written law relating to limitation" because the expression applied only to limiting provisions found in the Limitation Act (Cap 163, 1996 Rev Ed). Mr Sam agreed with him. Ms Foo contended to the contrary. She argued that the expression applied to any written law that prohibits the commencement of any proceedings after a period of limitation and that O 14 r 14 was such a law because it prohibited the commencement of O 14 proceedings after a prescribed time.

8 Both Mr Wong and Ms Foo did not draw my attention to any authorities that support their respective interpretations of the phrase "any written law relating to limitation". The expression also does not appear to have been considered in any local judgment. However, there is a decision of the divisional court that was subsequently affirmed by the English Court of Appeal which dealt with a similar issue of what amounts to a "statute of limitations", *ie Gregory v Torquay Corporation* [1911] 2 KB 566.

9 In that case, the defendant wanted to rely on the provisions of the Public Authorities Protection Act as a defence against the plaintiff's claim to recover damages for the death of his son owing to the negligence of the defendant's servants. Pursuant to Order X r 14 of the County Court Rules, when "a defendant intends to rely on the defence of any statute of limitation his statement shall be according to the form in the appendix". The form simply required the defendant to state that the claim was barred by a statute of limitations. In contrast, Order X r 18 of the same rules required a defendant who was relying on any statutory defence, apart from that of statutory limitation, to plead particulars of the statute. The defendant took the view that the Public Authorities Protection Act was a statute of limitations and pleaded accordingly. The plaintiff contended that Order X r 14 was inapplicable as the statute was not a statute of limitations and that the defendant's pleadings were therefore defective because they did not contain the particulars required pursuant to Order X r 18. In considering whether the statute was a "statute of limitations", Pickford J stated that:

> There is no definition of the expression "statute of limitations," but in my opinion it cannot be confined to statutes which by their title are so styled…It seems to me that prima facie any statute which imposes a limitation of time upon an existing right of action is properly called a statute of limitations. It is necessary, therefore, in each case to look at the particular statute and see what its effect is.

10 I agree with Pickford J's view that the expression "statute of limitations" is not confined to provisions that are named as such. Consequently, I reject Mr Wong's submission that "written law relating to limitation" must apply only to laws that are so styled, *ie* the Limitation Act. The phrase

itself is widely drafted and it does not contain the restriction that Mr Wong sought to place on it. In addition, I also agree with the learned judge that the proper approach to take in determining if a provision is a statute of limitations is to consider its effect.

11 What then is the effect of O 14 r 14? The rule is atypical. Provisions of the Rules that relate to time generally prescribe time for the doing of an act in interlocutory proceedings but do not relate to limitation. For example, O 25 r 1(1) requires the plaintiff to "within one month after the pleadings in the action are deemed to be closed, take out a summons for direction…". Even the rule relating to the prescription of time for the initiation of appeals, *ie* O 57 r 4, is drafted in a similar vein. The rule reads "…every notice of appeal must be filed and served …within one month". O 14 r 14, however, is drafted in a different fashion. It adopts a negative phraseology, *ie* "[n]o summons … shall be filed more than 14 days after the pleadings in the action are deemed closed". Such negative expressions are commonly found in other provisions that impose a time limit to commence an action, *eg* sections 9 and 20 of the Limitation Act. The former reads "[n]o action shall be brought by any person to recover any land after the expiration of 12 years…" and the latter, "[n]o action shall be brought to recover arrears… after the expiration of 6 years…".

12 The words employed by the drafters of O 14 r 14 created a rule that does not merely prescribe time for the doing of an act but actually prohibits the commencement of O 14 proceedings after a period of limitation. I am of the view that the rule is a written law relating to limitation. It functions as any other law relating to limitation does. Although it applies to the commencement of interlocutory proceedings and not causes of action, I do not think that this is a bar to it being a "law relating to limitation". I recognise that the expression is more often applied to laws that prohibit the commencement of causes of action. However, this does not necessarily mean that it is inapplicable to provisions that relate to interlocutory proceedings. It is simply a reflection of the scheme of the Rules where provisions are generally made for the prescription of time for the doing of an act in interlocutory proceedings, rather than to limit the commencement of any proceedings.

13 I return to paragraph 7 of the First Schedule of the SCJA. The provision expressly states that the power of the court to extend time is without prejudice to any written law relating to limitation. I am of the view that since O 14 r 14 is a written law relating to limitation, the High Court does not have the power to extend time for the filing of an O 14 application outside the period of limitation prescribed by the rule, pursuant to paragraph 7.

14 Next, the applicants relied on O 3 r 4(1) of the Rules as an alternative source of power for the court to extend time for the filing of an application under O 14. The sub-rule reads:

> The court may, on such terms as it thinks just, by order extend or abridge the period within which a person is *required or authorised* by these Rules or by any judgment, order or direction, *to do any act in any proceedings* (emphasis added).

15 Order 3 r 4(1) is a subsidiary legislation created pursuant to the SCJA. It gives effect to the power of the court to extend time as provided for by paragraph 7 of the First Schedule of the SCJA. The provisions of the primary legislation must therefore circumscribe the sub-rule. O 3 r 4(1) cannot be relied on to extend time to file an application under O 14 beyond a limitation period when the court has no such power to do so under the SCJA.

16 The language of O 3 r 4(1) itself bears out this conclusion. The sub-rule empowers the court to extend time to "do any act in any proceedings". Where there is no act that the parties are required to do, the sub-rule is inapplicable. O 14 r 14 simply bars the commencement of proceedings after the period of limitation. It does not *require* any act to be done by a certain time for O 3 r 4(1)

to operate. In my view, the negative phraseology adopted by O 14 r 14 is to be distinguished from a positive expression that requires an act to be done within a prescribed time, *eg* "a summons under this order shall be taken out within 14 days…". O 3 r 4(1) does not apply to the former scenario but to the latter.

17 Finally, Mr Wong also submitted that O 3 r 4(1) gives a general power to the court to extend any time limit prescribed by the Rules and that if such a power is to be abrogated, there should be an express provision to do so. For the reasons set out above, I am of the opinion that the inapplicability of O 3 r 4(1) is sufficiently clear from the combined effect of paragraph 7 of the First Schedule of the SCJA, O 14 r 14 and O 3 r 4(1), without the need for an express provision stating the same.

Inherent jurisdiction

18 The applicants argued that, regardless of whether the court has the express power to grant leave to them to file their application under O 14 outside the period of limitation specifically provided by the rules, it has the inherent power to do so. In other words, they sought the invocation of the court's inherent powers pursuant to the common law or O 92 r 4 of the Rules to override the express provision of O 14 r 14 that disallows the filing of a summons after the period of limitation. O 92 r 4 reads:

> For the removal of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

19 The concept of "inherent jurisdiction of the court", by its very nature, defies the prescription of any comprehensive test as to its exercise. That is not to say that there are no guidelines controlling the exercise of such powers. I am guided by the decision of the Court of Appeal in *Samsung Corporation v Chinese Chamber Realty and Others* [2003] SGCA 50, in which a similar issue arose as to whether it was appropriate for the court to exercise its inherent powers to override a provision of the Rules. In that case, Chinese Chamber Realty ('CCR') engaged Samsung Corporation ('Samsung') as their builders. CCR commenced an action to recover payments due to delays in the completion of the contract. Samsung entered appearance and applied for a stay because there was an arbitration clause in parties' contract. However, they did not want to file their Defence until the stay application had been finally decided. This was because such an act may be construed as a step in the proceedings and adversely affect their stay application. Consequently, CCR could not file their O 14 application because the existing O 14 r 1 required a Defence to be filed before an application for summary judgment could be filed. At the hearing of the stay application, CCR applied orally for leave to file the O 14 application before Samsung filed their Defence. This was so that both the stay application and the O 14 application could be heard together, as was the practice prior to the amendments to O 14 r 1.

20 CCR succeeded before the assistant registrar, who invoked the inherent powers of the court as the basis for granting leave. On appeal, the judge ruled that the assistant registrar erred in overriding the express provisions of O 14 r 1 by the exercise of the court's inherent powers. When this issue arose for consideration before the Court of Appeal, Chao Hick Tin JA, delivering the judgment of the court, endorsed the following views of the judge (at para 12):

> …*generally* where the Rules of Court have expressly provided what can or cannot be done in a certain circumstance, it is not for the court to override the clear provision in exercise of its inherent powers. No court should arrogate unto itself a power to act contrary to the Rules. The rule making powers are conferred upon the Rules Committee. The court should not usurp the

powers and functions of the Rules Committee: See *The Siskina* [1979] AC 210. If, in its opinion, what is clearly provided in a particular rule is undesirable or unjust, the course which the court should take would be to offer its views on it for the consideration of the Rules Committee but not to amend it, or bend it, to reflect what it thinks is just or more desirable (emphasis added).

21 At the same time, the court recognised that the authorities on the point are not entirely consistent. It deliberately declined to formulate a comprehensive test to govern the exercise of the inherent powers of the court so as not to curtail the dynamism of the concept. The only touchstone laid down by the court was set out as follows (at para 15):

> We had in the case of *Wee Soon Kim Anthony v Law Society of Singapore* [2001] 4 SLR 25 at 32 mentioned that one essential touchstone for invoking the inherent jurisdiction of the court was that of "need". In other circumstances, the *compelling* reason may well be the "justice of the case" or the "prevention of abuse" (emphasis added).

22 In summary, the general rule is that the court should not introduce its own notions of justice by the exercise of its inherent powers to contravene a clear, express provision of the Rules. There may still be some residual place for the invocation of the court's inherent powers of the court to act contrary to the Rules if there is some *compelling* reason to do so. In practice, however, the standard is an extremely exacting one because the court has to bear in mind the need to give full respect to the distinct functions and powers of the Rules Committee and the judiciary in making law.

23 I turn to apply these principles to the facts of the present case. The applicants contended that they would suffer a grave injustice if they were not allowed an extension of time to file their O 14 applications. This was because they had valid reasons to account for the delay in filing their applications. In essence, the delay resulted from the inability to put together the facts and evidence needed to support their applications for summary judgment in time. In the case of United Engineers, this was because they were waiting for a response from the Attorney-General's Chambers to their request for information regarding Lee's convictions. As for SYC, the delay was due to the need to peruse voluminous documentation. In addition, they argued that they should not be precluded from filing an application for summary judgment out of time when the defendant will not suffer any prejudice and when such an application may lead to savings of time and costs, as a trial may be avoided.

24 While these factors may be relevant to the exercise of the power to extend time if the court possesses such a power, they are not sufficient of themselves to provide a *compelling* reason to invoke the inherent powers of the court. O 14 r 14 reflects the fine balance arrived at by the Rules Committee between the need for certainty, timeliness and justice. It provides the much-needed certainty to the parties and the court, as to whether a matter is proceeding on the normal management or summary judgment track, as soon as the time bar lapses. At the same time, the Rules Committee has considered that it is sufficient to give parties 14 days after the deemed closure of pleadings to decide whether summary judgment is appropriate, in the interest of efficiency without any compromise on substantial justice. In my view, the need to sift through voluminous documentation and waiting for third parties to provide evidence to bolster a case are oft-encountered difficulties that litigants may face in mounting an application for summary judgment. They do not amount to sufficiently exceptional circumstances that warrant a departure from the general rule that the express provisions of O 14 r 14 should be respected by this court.

Conclusion

25 For the reasons stated above, I am of the view that this court does not have the express

power to grant extensions of time to file and serve a summons under O 14. The present case is also not an appropriate one for the exercise of the court's inherent powers in favour of United Engineers and SYC. Accordingly, I refused to grant the extensions of time that they sought.