

Zhang Yijun and others v ING Asia Private Bank Ltd
[2011] SGHC 231

Case Number : Suit No 1080 of 2009 (Registrar's Appeal No 304 of 2011)
Decision Date : 24 October 2011
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Tham Wei Chern (Allen & Gledhill LLP) for the appellant/ defendant; Jacelyn Chan (Wong Tan & Molly Lim LLC) for the respondent/ plaintiff
Parties : Zhang Yijun and others — ING Asia Private Bank Ltd

Civil Procedure

24 October 2011

Choo Han Teck J:

1 The defendant bank appealed before me against an order that the trial of this action be bifurcated. The order below was made upon an application by the plaintiffs. The first plaintiff is the principal plaintiff. The second plaintiff is her daughter. The third and fourth plaintiffs are investment holding companies set up by the first plaintiff. The plaintiffs' claim in this action involved five accounts maintained with the defendant and the causes of action were based on inter alia misrepresentation and breaches of duties by the defendant as banker.

2 The action is scheduled for trial for ten days commencing on 9 January 2012. This was fixed at a pre-trial conference held on 15 September 2011 and was determined on the basis that the action be heard in its entirety. The affidavits of evidence-in-chief are due to be exchanged on 18 November 2011. The experts' reports, however, have already been exchanged on 7 September 2011 pursuant to directions. The experts' evidence, according to Mr Tham Wei Chern, counsel for the defendant, will just be affirmations of those reports. The defendant has one expert. The plaintiffs have three experts, and one of them resides in Australia.

3 Miss Jacelyn Chan, counsel for the plaintiffs, then applied on 16 September 2011 to have the trial bifurcated. On 30 September 2011, the Assistant Registrar granted the application in terms. Although the application merely prayed that "the trial of this matter be bifurcated with the issue of liability being tried and determined separately and prior to the assessment and determination of the quantum of damages payable", both counsel agreed that it was intended and understood that the order will result in the trial judge hearing the question of liability and the quantum of damages, if liability is established, to be determined subsequently by an assistant registrar.

4 Mr Tham submitted that the order should not have been made because an action should normally be tried in its entirety and it is incumbent upon the party applying for a bifurcation order to show special reasons why such an order was necessary. He argued that there were no special reasons shown in this case. On the contrary, the evidence relating to quantum have already been filed and exchanged. Thus, the only reason put forward by the plaintiffs, namely, that a bifurcation would save time and costs, cannot be justified. Counsel argued that, on the contrary, more time and costs would result from a bifurcation of the trial because Mr Owain Stone, the expert who resides in Australia and testifying as an expert witness regarding liability and quantum will have to make two

trips. Parties will also have to spend time on refresher when the trial is bifurcated.

5 In my view, consideration of the merits of this appeal ought to begin with the directions given at the pre-trial conference. The parties having settled on the number of days required for the trial and the trial dates, it is incumbent upon counsel wishing to change the dates or the number of days to show on good grounds why changes should be made. The length and dates for trial are normally, as in this case, calculated in contemplation that the entire action, namely, liability and damages, will be determined at the same time. Changes can be made, of course, with reason. Some reasons for changes are straightforward and reasonable, for example, when a party overestimated the number of days required because he decided to call half the witnesses he initially thought he needed; or where the parties subsequently agreed on major issues that were initially in dispute.

6 In this instance, the cause of action being inter alia misrepresentation and breach of duties concerning transactions made by the defendant bank to its customers and which the customers now claim to be made without authority are matters in which liability, and the quantum of loss are closely connected. They are so intertwined that it is only reasonable that the action is tried in its entirety by the same judge. Evidence may show that some transactions were clearly made, some clearly not made, some made for reasons not supported by the claims made, and so on. Some of these may result in loss and damage and some may not. Other peripheral and related matters such as the assessment of the credibility of witnesses common to the issue of liability and the issue of quantum should not be made by different judges for obvious reasons. Even if it became necessary for different judges to hear liability and quantum separately, the second judge ought generally to be a judge and not an assistant registrar, not because the latter would be less competent but because it meant that the right of appeal for one may be exercised twice – once to the High Court and then the Court of Appeal. Thus, there must be good reason for this kind of bifurcation. Personal injury cases appear to have been a long established exception and it is not necessary for me to comment on that here.

7 If, as Miss Chan now says, the court finds that the plaintiffs fail to establish liability, and the parties would have saved five days of trial time, then the plaintiffs should not have agreed at the pre-trial conference for the exchange of expert reports and the number of days for trial. As it turned out, the plaintiffs applied to bifurcate shortly after receiving the defendant's expert reports on damages. In these circumstances, the claim that there would be a saving in time and costs is a poor one. It fails to recognise the waste of the experts' time in preparing their reports. It also ignores the possibility that even more costs and time may be wasted in convening a second trial to determine the quantum of damages. Not only will there be a duplication of effort for the parties to prove and disprove overlapping evidence, there will also be unnecessary time, effort, and consequently, costs, being expended to refresh the historical matters that might already have been determined but essential to the preparation of the dispute as to quantum.

8 For these reasons, I am of the view that the appeal be allowed and the order for bifurcation is set aside with costs here and below to be argued before me on a later date.

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