

Chiltern Park Development Pte Ltd v Ong Pang Wee and Others
[2002] SGHC 135

Case Number : OS 687/2002
Decision Date : 28 June 2002
Tribunal/Court : High Court
Coram : Woo Bih Li JC
Counsel Name(s) : Loh Kim Kee (Martin & Partners) for the applicants/defendants; Tan Yeow Hiang (Khattar Wong & Partners) for the respondents/plaintiffs
Parties : Chiltern Park Development Pte Ltd — Ong Pang Wee

Civil Procedure – Jurisdiction – Application to transfer proceedings from magistrate's court to High Court – High Court's power to transfer proceedings – Nature of court's power – Whether conflict between O 89 r 2 (1) and scheme of transfer of proceedings under Subordinate Courts Act – Whether High Court has jurisdiction to order transfer – Appropriate course of action – ss 24, 37 & 38 Subordinate Courts Act (Cap 321, 1999 Ed) – s 18, Sch 1 cl 10 Supreme Court of Judicature Act (Cap 322, 1999 Ed) – O 89 r 1 & O 89 r 2 Rules of Court

Judgment

GROUND OF DECISION

BACKGROUND

1. This was an application by three individuals Ong Pang Wee, Kang Yoke Ping and Ong Oon Teck (collectively referred to as 'the Purchasers') to transfer an action filed by the Respondent Chiltern Park Development Pte Ltd ('the Developer') on the Magistrate's Courts as MC Suit No 14303 of 2000/Y.
2. The Purchasers had bought a property known as Block 135 Serangoon Avenue 3 #02-06 Chiltern Park Singapore ('the Property') from the Developer.
3. In the MC suit, the Developer was claiming \$13,443.47 from the Purchasers being maintenance fees allegedly owing for the period April 1996 to June 1999 (including GST and interest).
4. In turn, the Purchasers counterclaimed against the Developer for defects in the Property and loss of use or loss of rent.
5. The Purchasers say the estimated cost of rectification works was \$80,000.
6. As for loss of rent, the keys to the Property were obtained in late May 1995 but due to the defects, the Purchasers say they have not been able to make use or let the Property out. They were counterclaiming the loss of use or loss of rent from June 1995 to April 2002 and this loss was continuing. They asserted that the market rent for the Property would be between \$3,300 to \$4,000 a month.
7. Their position was that the quantum of their counterclaim aggregated \$353,900 and would come under the jurisdiction of the High Court, hence, their application.
8. At this stage, I would say that the High Court has jurisdiction even if the aggregate of the counterclaim is \$35,000 only. The point is not so much that the High Court has jurisdiction over the counterclaim, but rather that the aggregate of the counterclaim exceeds the jurisdiction of the Magistrate's Court, as well as the District Court, and hence the application.

9. I would also add that the first prayer of the application sought an order that the MC suit be transferred from the Subordinate Courts to the High Court forthwith. Where there is a claim and a counterclaim, the prayer should make it clear that both the claim and counterclaim in the named action are to be transferred.

ARGUMENTS

10. Mr Tan Yeow Hiang, Counsel for the Developer, submitted that the High Court had no jurisdiction to order the transfer. He referred to various provisions in the Supreme Court of Judicature Act (Cap 322) and in the Subordinate Courts Act (Cap 321).

Supreme Court of Judicature Act (Cap 322)

11. Section 18(1) to (3) states:

`Powers of High Court

18.(1) The High Court shall have such powers as are vested in it by any written law for the time being in force in Singapore.

(2) Without prejudice to the generality of subsection (1), the High Court shall have the powers set out in the First Schedule.

(3) The powers referred to in subsection (2) shall be exercised in accordance with any written law or Rules of Court relating to them.'

12. Clause 10 of the First Schedule to the SCJA states:

`Transfer of proceedings

10. Power to transfer any proceedings to any other court or to or from any subordinate court, and in the case of transfer to or from a subordinate court to give any directions as to the further conduct thereof, except that this power shall be exercised in such manner as may be prescribed by Rules of Court.'

13. Mr Tan stressed that the power mentioned in Clause 10 was to be exercised 'in accordance with any written law or Rules of Court relating to [it]' and the relevant written law was the Subordinate Courts Act (Cap 321).

Subordinate Courts Act (Cap 321)

14. Mr Tan submitted that there are three relevant sections in the Subordinate Courts Act relating to the transfer of an action to the High Court i.e sections 24, 38 and 41.

15. The relevant provision in s 24 is s 24(1). It states:

`Transfer of counterclaim from District Court to High Court

24.(1) Where, in an action founded on contract or tort in a District Court, any counterclaim or set-off and counterclaim of any defendant involves a matter beyond the jurisdiction of the District Court, any party to the action may apply to the High Court, within such time as may be prescribed by Rules of Court, for an order that the whole proceedings, or the proceedings on the counterclaim or set-off and counterclaim, be transferred to the High Court.'

16. Section 38 states:

'General power to transfer from District Court to High Court

38. Where it is made to appear to the High Court, on the application of a party to any civil proceeding pending in a District Court, that the proceeding by reason of its involving some important question of law, or being a test case, or for any other sufficient reason, is one which should be tried in the High Court, it may order the record to be transferred to the High Court.'

17. The relevant provision in s 41 is s 41(1) which states:

'Allocation of proceeding to High Court

41.(1) The Chief Justice may, where he considers it necessary or expedient to improve efficiency in the administration of justice and to provide for more speedy disposal of proceedings commenced in the District Courts, by order direct such class or classes or description of proceedings as may be specified in the order to be heard and determined by the High Court.'

18. Mr Tan submitted that all these three provisions show that the transfer of proceedings to the High Court is of proceedings in the District Court. There is no mention of a transfer of proceedings in the Magistrate's Court to the High Court. Applying the *expressio unius est exclusio alterius* rule for statutory interpretation, he submitted that Parliament did not intend to allow an application to be made to transfer a claim/counterclaim from the Magistrate's Court to the High Court.

19. He also referred to s 53 of the Subordinate Courts Act which states:

'Transfer from Magistrate's Courts to District Courts

53. A Magistrate's Court may, either of its own motion or on the application of a party to an action, transfer the action to a District Court on the ground that some important question of law or fact is likely to arise.'

20. His point was that s 53 reinforced his submission because it provided for a transfer from the Magistrate's Court only to the District Court, and even then, only on the ground 'that some important question of law or fact is likely to arise'.

21. For the Purchasers, Mr Loh Kim Kee submitted that Clause 10 (of the First Schedule to the SCJA) did not restrict the court from which a transfer could be made by the High Court. The power therein was to transfer to or from 'any subordinate court' and not just to or from a District Court.

22. He also relied on O 89 r 2(1) of the Rules of Court which states:

'Procedure on transfer from the Subordinate Courts (O.89, r.2)

2. (1) Where an order is made by the High Court for the transfer of any proceedings from the Subordinate Courts to the High Court, the Registrar of the Subordinate Courts must send to the Registrar of the Supreme Court the file of the proceedings, all documents, exhibits and a certified copy of the notes of evidence (if any) of the proceedings.'

23. This provision also did not state that the transfer from the Subordinate Courts to the High Court was restricted to a transfer from the District Court.

24. Mr Tan countered Mr Loh's reliance on O 89 r 2(1) by referring to O 89 r 1(1) which states:

'Time for making application under sections 24,37 and 39 (O.89, r.1)

1.(1) Any application to the High Court under sections 24, 37 and 39 of the Subordinate Courts Act (Chapter 321) must be made by originating summons in Form 7.'

25. I should add that:

(a) the reference to s 39 of the Subordinate Courts Act is probably incorrect as s 39 does not deal with the transfer of proceedings. The reference should probably be to s 38 instead,

(b) the heading for O 89 r 1(1) is inappropriate as the substance thereof does not deal with the time for making an application.

26. Mr Tan's point was that O 89 r 1(1) envisaged the transfer of proceedings only under the provisions identified therein and those provisions did not specify a transfer from the Magistrate's Court to the High Court.

27. According to Mr Tan and Mr Loh, the Parliamentary Reports did not assist in the interpretation of the SCJA or the Subordinate Courts Act.

MY DECISION

28. I was of the view that Clause 10 of the First Schedule to the SCJA must be read subject to s 18(3) which specifically provides that the powers referred to in s 18(2), which in turn refers to the First Schedule, 'shall be exercised in accordance with any written law or Rules of Court relating to them'.

29. This is consistent with s 18(1) which provides that the 'High Court shall have such powers as are vested in it by any written law ...'.

30. The written law that was relevant for the purpose of the application before me was the Subordinate Courts Act.

31. I was of the view that Mr Tan was correct in his submission that the scheme under that Act envisaged a transfer of proceedings from only the District Court to the High Court and not from the Magistrate's Court to the High Court.

32. As regards the Rules of Court, O 89 r 1(1) did not specifically say that a transfer from a subordinate court to the High Court is restricted to proceedings in a District Court. It was specifying only the form to be used in an application for transfer under the three sections named therein.

33. However, I was of the view that the reference to only the three sections mentioned therein which in turn refer to a transfer from the District Court to the High Court (ss 24 and 38) or from the High Court to the District Court (s 37), reinforced the scheme I have mentioned under the Subordinate Courts Act.

34. Furthermore, although rule 2(1) refers generally to the transfer of 'any proceedings from the Subordinate Courts to the High Court', it should be interpreted in a manner consistent with, and not contrary to, the scheme under the Subordinate Courts Act.

35. In my view, there is no inconsistency between O 89 r 2(1) with that scheme. In any event, subsidiary legislation cannot over-ride primary legislation.

36. Mr Loh brought up another point. He said that if the Purchasers had to file a fresh suit in the High Court, and withdraw the counterclaim in the MC suit, they may be caught by a time-bar, in so far as the earlier period in respect of their claim was concerned. In my view, the Purchasers' claim should not have been filed as a counterclaim in the MC suit in the first place. I should add that Mr Loh was unable to say why this had been done as his firm was not acting for the Purchasers at the relevant time.

37. As for the question as to what should be done with regard to the Developer's claim, it was up to the Developer to decide whether to proceed with it or withdraw it and file the claim as a counterclaim in the High Court suit to be filed by the Purchasers so that both claims could be dealt with together. While this was far from ideal, it was the result of the scheme of things prevailing.

38. It may well be that there should be some law reform to address the situation which has arisen so that, in future, a party in the High Court can apply to have proceedings in the Magistrate's Court transferred to the High Court, if the circumstances warrant such an order. Likewise, for the transfer of proceedings from the Magistrate's Court to the District Court which is at present limited to an important question of law or fact. However, the question of law reform is a separate matter.

39. In the circumstances, I dismissed the application with costs.

Sgd:

WOO BIH LI

JUDICIAL COMMISSIONER

SINGAPORE

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