

Beckett Pte Ltd v Deutsche Bank AG and Another
[2006] SGHC 243

Case Number : Suit 326/2004, SUM 3795/2006
Decision Date : 29 December 2006
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Steven Chong SC, Sim Kwan Kiat and Ronald Choo (Rajah & Tann) for the plaintiff; Kenneth Tan SC and Soh Wei Chi (instructed) (Kenneth Tan Partnership) and Ng Soon Kai (Ng Chong & Hue LLC) for the second defendant
Parties : Beckett Pte Ltd — Deutsche Bank AG; PT Dianlia Setyamukti

29 December 2006

Kan Ting Chiu J:

- 1 This is a short note on my decision to allow the plaintiff, Beckett Pte Ltd, to amend its amended reply to the defence of the second defendant, PT Dianlia Setyamukti. The application was made on 16 August 2006 and it was granted on 18 August 2006, the 32nd day of the trial of the action.
- 2 When the second defendant appealed against my order, I did not write my grounds as I intended to deal with the amendment as part of the whole action. Upon learning that the appeal against the amendment has been fixed for hearing, I decided to give my brief reasons for allowing the application.
- 3 The amendments related to the financial arrangements that the second defendant had entered into to enable it to purchase the pledged shares from the first defendant, Deutsche Bank AG. The amendments alleged that the arrangements included the execution of sham documents which were not intended to be carried out as well as the creation of documents which were not only sham, but were also backdated.
- 4 The plaintiff made the application on the basis that:
 - (1) documents produced by the second defendant in the course of the hearing were shown to be backdated. The backdating was revealed upon the discovery that the revenue stamps affixed came into circulation *after* the purported dates of execution of the documents, contrary to the evidence adduced by the second defendant that the documents were executed on the stated dates of execution; and
 - (2) confirmation from one of the second defendant's witnesses, Mr Sandiaga Uno, during cross-examination, that some of the documents had not been acted on. Although the documents set out actions that were to be done, no action was in fact carried out.
- 5 The plaintiff explained the background against which the amendments arose, and the reason for it not being made earlier in two affidavits deposed by Mr Ling Ping Shuen Arthur ("Arthur Ling") on 16 August 2006 and 17 August 2006. The first affidavit was filed in support of the application, and was referred to in the arguments. The second affidavit was filed in the course of the arguments to confirm matters brought up during the arguments.
- 6 The principal events referred to in the affidavits are:

(a) on 5 July 2006, the second defendant filed additional affidavits of three witnesses, M/s Edwin Soeryadjaya, Sandiaga Uno and Chia Ah Hoo, which set out the financing arrangements that were made for the second defendant to purchase the pledged shares which are the subject matter of the action;

(b) on 10 July 2006, in the course of the hearing of the main action, the second defendant filed its 4th Supplementary List of Documents connected to those financing arrangements;

(c) on 19 July 2006, the plaintiff inspected some of the original documents disclosed. The inspection showed that different stamps were used for different documents over the same period between January 2002 and March 2002;

(d) the plaintiff's solicitors consulted Indonesian lawyers and were advised that some of the stamps used were new stamps issued pursuant to a Decree dated 3 July 2002;

(e) on 1 August 2006, counsel for the plaintiff was advised by an Indonesian lawyer that the new stamps were highly unlikely to be in circulation in January and March 2002. On the basis of that advice, the plaintiff believed that the documents could have been backdated;

(f) on 14 August 2006, the second defendant's witness Sandiaga Uno was specifically cross-examined on the backdating of the documents. At that time, I brought up the possibility that it may have been possible that the new stamps were put in circulation before 3 July 2002, and suggested that a check be done on that matter;

(g) on 15 August 2006, the plaintiff received confirmation in the form of a copy of a Circular of the Jakarta Post Office dated 10 July 2002 which stated that the said stamps would be distributed from 10 July 2002, and on the strength of this circular, the plaintiff was able to definitively state that the documents were backdated.

7 Mr Arthur Ling's affidavits also addressed the proposed amendments. He deposed that the financing documents contradicted the second defendant's pleaded defence that it was a *bona fide* purchaser of the pledged shares and its denial that it was engaged in a conspiracy to injure the plaintiff.

8 In opposition to the plaintiff's application, the second defendant filed an affidavit through its solicitor, Mr Ng Soon Kai. He explained the difficulties the second defendant faced which prevented it from filing the 4th Supplementary List of Documents earlier despite having agreed on 18 May 2006 (the plaintiff countered that the second defendant's solicitors had on 3 April 2006 indicated they will file a supplementary list of documents) to file the supplementary list.

9 Mr Ng also pointed out that the backdated documents had been disclosed to the plaintiff between 13 April 2006 and 1 June 2006. Mr Ng also asserted that:

(a) as the plaintiff had received copies of the documents by 1 June 2006 at the latest, it should have been able to conclude before 15 August 2006 that the documents were backdated;

(b) when counsel for the plaintiff commenced the cross-examination of the second defendant's witness Sandiaga Uno on 10 August 2006, he had the backdating of the documents clearly in mind, but the plaintiff had held back on giving notice of its intention to plead that as an issue for tactical reasons;

and he concluded that:

The 2nd Defendant will be prejudiced in a manner that cannot be compensated by costs, if the amendments are allowed. In addition to the tactical withholding of notice before cross examination of Mr Uno, if the amendment are allowed, the trial with its attendant strains, costs and uncertainties, will have to be extended further. Further evidence will have to be sought in relation to this new allegation and new front sought to be introduced by the Plaintiff.[\[note: 1\]](#)

10 In the course of the arguments before me, counsel for the second defendant also submitted that the amendments should not be allowed as they were vague and lacking in particulars.

My decision

11 I considered the second defendant's objections before I allowed the plaintiff's application. On the complaint of tactical delay, any delay must relate back to the time of discovery of backdating. It should be noted that both parties have contributed to the delay. The second defendant should have filed its supplementary list of documents earlier whether in April or in May, and not have delayed till 10 July 2006. The plaintiff, on the other hand, should have investigated into the introduction of the circulation of the new stamps from the time it inspected the original documents on 19 July 2006 when its suspicions were aroused. If it had done that, it would have completed its investigations and prepared its application for amendments in relation to the backdating before the cross-examination of Sandiaga Uno commenced.

12 Having said that, I found that the delay on the plaintiff's part was not substantial. I was not persuaded that the delay caused prejudice to the second defendant or gave the plaintiff any tactical advantage. As events turned out, when the evidence on the stamps was presented, the second defendant accepted that the documents were backdated. It wanted the opportunity to explain the backdating and also to explain why that had not been disclosed earlier. Leave was given for Chia Ah Hoo to file a further affidavit for that purpose, and that was done. The trial proceeded and concluded on schedule without any extension of the hearing dates.

13 As for the complaint of vagueness and lack of particulars, I looked at the proposed amendments. While it can be said that there could have been greater particulars, they are not so wanting that the second defendant can say that it cannot understand them, or was unable to respond to them effectively. In any event, the adequacy of particulars must be measured against the circumstances. The proposed amendments came about because of the documents produced and Mr Uno's answers to counsel's questions in cross-examination. In such circumstances, the plaintiff should be allowed to plead to such detail as it is able to, and it has done that.

[\[note: 1\]](#) Affidavit of Ng Soon Kai dated 18 August 2006 para 23