# Andre Ravindran S Arul v Tunku Ibrahim Ismail bin Sultan Iskandar Al-Haj [2001] SGHC 209

**Case Number** : Suit 224/2001, RA 136/2001

**Decision Date** : 01 August 2001

**Tribunal/Court** : High Court

**Coram** : Choo Han Teck JC

**Counsel Name(s)** : Raj Singam and Gopinath Pillai [Drew & Napier] for the appellant/defendant; Andre Arul [Arul Chew & Partners] for the respondent/plaintiff

**Parties** : Andre Ravindran S Arul — Tunku Ibrahim Ismail bin Sultan Iskandar Al-Haj

## JUDGMENT:

1. This is an appeal by the defendant against the assistant registrar Mr. Kwek Mean Luck's refusal to stay proceedings on the ground of *forum non conveniens*. The plaintiff commenced this action against the defendant for unpaid fees. The plaintiff is presently an advocate and solicitor in Singapore. The defendant is the eldest son of the Sultan of Johor. According to his counsel Mr. Raj Singam, the defendant is a businessman and investor by occupation.

2. The plaintiff's simple and straightforward claim is, however, embellished in 230 paragraphs of a lengthy statement of claim 90 pages long. His claim is that the defendant engaged him as a "legal and negotiating consultant" on the basis of "S$1,600 a day or S$500 an hour (where only a few hours of work was involved)". There is also a claim for US$60,000 being fees related to two specific agreements alleged to be agreed at US$30,000 per agreement, as well as costs of disbursements and incidentals.

3. It is not in dispute that the plaintiff was engaged by the defendant to advise and assist him in the defendant's involvement in a large oil and gas concession project in Indonesia, referred to loosely by the parties as the "Petrogas Project". From the submission of his counsel, it appears (the defence has not been filed) that the defendant is resisting the claim on two principal grounds. First, that the plaintiff is not entitled by the proper law of the contract - which the defendant says is Malaysian law – to recover because the plaintiff was effectively working as an advocate and solicitor in Malaysia without the requisite practising certificate. Secondly, the defendant says that the terms of the contract were not "expressly discussed" and neither the scope of work nor the rate of remuneration were agreed upon. The defendant says that the plaintiff was not employed by him but by one of the Indonesian parties.

4. The plaintiff says that he was employed by the defendant from March 1995 to July 1996. He conceded that he had not taken out a practising certificate to practise law in Singapore between the two dates. He also did not have a practising certificate to practise law in Malaysia at all material times. The defendant considers this to be a significant fact because it supports his defence that the claim was unenforceable under Malaysian law. The plaintiff does not agree that it is relevant. The fees claimed by the plaintiff are set out in various bills prepared by him and given to the defendant.

5. The defendant applied to stay the action under s 9 of the Supreme Court of Judicature Act, Ch 322, on the ground that there is a multiplicity of proceedings in that the same matter is being tried here and in Malaysia where the defendant had instituted an action to declare that the plaintiff's claim is unenforceable at law; and secondly, on the ground that Singapore is not the appropriate forum for the proceedings to be tried. The burden of proof in an application of this nature is on the defendant once it is shown - and in this case it is not disputed - that this court has the jurisdiction to try the

action which has been properly instituted and served on the defendant.

6. I shall first consider the point concerning a multiplicity of proceedings. The most obvious cases of this sort are those in which a plaintiff commences two or more actions against the same defendant based on the same or similar causes of action in different jurisdictions. In such cases, it is often not difficult to see where the hardship may lay, especially if the competing jurisdictions are far apart. There are some cases where the plaintiff in one jurisdiction is sued by the defendant in another jurisdiction over the same facts but on a cross-claim. In such cases, it may not be easy to determine where the more appropriate jurisdiction is, especially when the two claims are genuine disputes and commenced in the respective jurisdictions in good faith. In the present case before me, the defendant's action in Malaysia is not a cross claim. It is a claim for declaratory orders which, if the suit in Singapore had not been brought, would have been considered to be a defensive action brought in anticipation of a suit. Such actions are not always regarded as necessary without good reasons otherwise. Hence, in the absence of other factors, in a competition of claims, I would consider the action by the plaintiff in Singapore to be the more substantive one and, objectively, if one of the two actions has to be stayed it would be more reasonable for the defendant to stay his action in Malaysia. However, in view of the other ground (*forum non conveniens*) raised by him, it is now necessary for me to consider whether the Malaysian court is the more appropriate forum to try the action.

7. The principles governing the application of *forum non conveniens* summarized by Lord Goff in *The Spiliada* [1987] 1 AC 460, 476 begins with the general enquiry as to whether there is a more appropriate forum for the trial of the action. It is a reiteration of the words of Lord Diplock in the previous case of *The Abidin Daver* [1984] AC 398, 411 in which he said:

> "the plea can never be sustained unless the court is satisfied that there is some tribunal, having competent jurisdiction, in which the case may be tried more suitably for the interests of all the parties and for the ends of justice."

Mr. Singam submitted that in applying the principles set out in the *Abidin Daver* and the *Spiliada*, principles accepted and adopted in the Court of Appeal in *Oriental Insurance Co Ltd v Bhavani Stores Pte Ltd* [1998] 1 SLR 253, it will be obvious that the sum of connecting factors mount in favour of the defendant. In summary, the factors in which he relies on in his submission consist of the fact that the defendant is a Malaysian and resident there; most of the witnesses are there; the documents are there; the agreement was concluded there; it was also in Malaysia that the contract was performed; the plaintiff's office was there; the defendant's assets are there; the applicable law is Malaysian law; and the defendant has commenced proceedings in respect of the same issues in Malaysia. Against this, counsel submitted, the only connection with Singapore is the fact that the plaintiff is resident here and that the defendant has a current account with a bank here. For the sake of completeness, counsel conceded that there were factors connecting the contract to Indonesia. First, the companies involved in the Petrogas Project are there; secondly, the project itself was an Indonesian project; and thirdly, three of the witnesses reside there.

8. In finding the appropriate forum it will be necessary to take stock and evaluate the list of connecting factors advanced by both sides; but ever mindful of the spirit which encapsulates the words of Lord Diplock in the *Abidin Daver*: that the appropriate forum is the one "which the case may be tried more suitably for the interests of all the parties and for the ends of justice." By its very nature thus, the factors in each case must be evaluated according to the circumstances of the case. The determination of the appropriate forum is not an exercise carried out merely by adding the sum total of all the relevant connecting factors. The court has to apportion a value to each factor and consider its place in the overall picture.

9. The present case is a claim for payment of invoices for consultancy work. The issues appear to be, at best, first, a dispute as to whether an employment contract was in fact created, and if so, under what terms. In this regard, from the affidavits filed, it appears that the main witnesses to this are the plaintiff and the defendant themselves, and the possibility that one Datuk Hamzah's evidence may be of some marginal relevance. Mr. Singam recited passages from *Lehman Brothers Special Financing Inc. v Haradi Angkosuboroto* [1999] 2 SLR 427 and the *Oriental Insurance* case to fortify his argument for home ground advantage for the witnesses. All these witnesses are important in so far as the project was concerned and are relevant, therefore, in the second issue namely, whether the plaintiff's invoices are justified by the work he had done. The third issue that follows, concerns a question of law, namely whether the plaintiff's claim is unenforceable under Malaysian law. This issue becomes relevant only after it is determined that Malaysian law applies or that the place of performance was Malaysia. The issue as to what is the applicable proper law is an issue to be determined by the forum. Therefore, in that sense, it is an issue caught in an circuitous puzzle. A contract can be lawfully made under the proper choice of law and yet be unenforceable at the place of performance. Here we have a situation where the plaintiff argues that the applicable law governing the contract of employment is Singapore law and the defendant saying that it is Malaysian law. I see no reason why the Singapore court cannot determine this issue. Whether the contract is unenforceable in Malaysia is a separate issue. But it is not a difficult one. I think that it is fair to say that the courts on either side of the Causeway will not have much difficulty understanding or appreciating the law governing contract and the practice of advocates and solicitors of each other's jurisdiction. Given the physical closeness of the two countries, and the similarity in respect of the two relevant areas of law in this case, the arguments by Mr. Singam concerning the inconvenience of witnesses are not sufficiently persuasive. Mr. Singam pointed out that the foreign law issue will be determined as an issue of fact and therefore, in that sense, affects the defendant's right of appeal. If the matter is tried in Malaysia, the issue may be argued up to the highest Court of Appeal there as a matter of law, but here it is constrained by it being classified as an issue of fact. I do not think that this argument ought to be given much weight. Whether the plaintiff's contract with the defendant is enforceable under Malaysian law is a matter of inference from the facts. Such matters are certainly justiciable before the Court of Appeal. Furthermore, the fact that foreign law is involved is not sufficient reason in itself to warrant a stay of proceedings, as is the case in respect of each connecting factor in itself. Mr. Singam also submitted that the documents and records are voluminous and inconvenient to bring to the Singapore courts. I see little evidence that supports that argument. The plaintiff has the burden of producing the documents necessary to justify his claim. He has not said that he has any difficulty with that. The defendant, on the other hand, has not shown what the voluminous documents are that the plaintiff does not have which will be relevant to the issue of the contract.

10. So, what we have is a case of a resident plaintiff suing a non-resident defendant over an employment contract the terms of which are in dispute. The witnesses are essentially the parties themselves, save for experts on Malaysian law – should it become necessary to call them. In my view, the case that Malaysia is more appropriate forum has not been adequately made out. In these circumstances, the applicant must fail. When a claim has been properly made the court must discharge its responsibilities that come with the jurisdiction and not lightly surrender its jurisdiction. For the above reasons, this appeal must fail, but I ought to deal with two additional matters before I conclude because they were raised here and below.

11. First, Mr. Singam referred me to a similar application by the defendant in another suit in which the plaintiff was the abovesaid Datuk Hamzah. Mr. Singam pointed out that the defendant there succeeded in obtaining a stay of proceedings on the ground of *forum non conveniens*. There is little known about that case before me as the plaintiff there has appealed to the Court of Appeal and counsel informs me that the grounds of decision have not been delivered. Both agree, however, that in that case, the plaintiff and defendant are residents of Malaysia and the suit concerned the

Petrogas Project in Indonesia. That alone may be a sufficient ground for staying the proceedings in Singapore, but as the matter is on appeal I do not think that we need to dwell on it. As I have said, each case must be determined on its own facts.

12. Finally, the assistant registrar is of the view that even if the case has been made out that Malaysia is the more appropriate forum he would nonetheless refuse the application for stay on the ground that the plaintiff will suffer a personal and juridical disadvantage. This is because there are restrictions under Malaysian law against a non-resident who intends on suing a ruler. There is a reasonable possibility that the defendant may ascend the Sultan's throne in Johor and when that happens, the plaintiff may not be able to pursue his civil claim against him. Mr. Singam submits that there is no evidence that this will happen as a matter of course or before the plaintiff's case can be heard. The assistant registrar based his opinion on the case of *Faridah Begum bte Abdullah v Sultan Haji Ahmad Shah Al Mustain Billah Ibni Almarhum Sultan Abu Bakar Ri'Ayatuddin Al Mu'Adzaam Shah* [1996] 1 MLJ 617. It is true that issues in civil proceedings are decided on a balance of probabilities, but the central question here is not the probability of the defendant ascending the throne, but whether it is probable that if he should ascend the throne would the plaintiff, on a balance of probabilities, suffer a juridical disadvantage? What the plaintiff expresses here is a personal fear of that disadvantage. The question therefore, is whether that fear was reasonably apprehended – not whether it may probably come to pass. I am of the view that the assistant registrar was right and I too, will not order a stay of the Singapore proceedings for that reason as well.

13. For the reasons above, I dismiss the appeal. I will hear arguments on costs at a later date if parties are unable to agree on that between themselves.

Sgd:

Choo Han Teck
Judicial Commissioner

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