

UCO Bank v Golden View Maritime Pte Ltd
[2003] SGHC 271

Case Number : Suit 184/2002/Z, SIC 5263/2003
Decision Date : 31 October 2003
Tribunal/Court : High Court
Coram : Belinda Ang Saw Ean J
Counsel Name(s) : Dylan Lee and David Kong (Shook Lin and Bok) for plaintiff; John Seow and Toh Kian Sing (Rajah and Tann) for defendant
Parties : UCO Bank — Golden View Maritime Pte Ltd

Injunctions – Mareva injunction – Whether injunction should be granted to prevent dissipation of assets.

1 UCO Bank, the Plaintiffs, had from time to time provided trade finance to their customer, SOM International Pte Ltd ("SOM"). From time to time, SOM would ship goods financed by the Plaintiffs on vessels managed by Glory Ship Management Pte Ltd ("Glory Ship Management"). SOM did not settle their financing obligations with the Plaintiffs and the latter as holders of various bills of lading commenced a total of five actions against the respective owners of the vessels involved in the shipments.

2 In this action, the Plaintiffs as holders of bill of lading no. SSR/ACHA/48C dated 23 January 2001 and bill of lading no. AU/GE/2 dated 1 March 2001 have sued Golden View Maritime Pte Ltd (the Defendants) who are the registered owners of the vessel "Asean Unity" for breach of contract and conversion. Their claim is for the sum of US\$330,415.03. The Defendants have been accused of releasing two shipments of Sarawak round logs to receivers in India without the production of the two bills of lading ("the original bills"). The Plaintiffs were the named consignees of the original bills in respect of the supplies of Sarawak round logs from East Malaysia and shipped on board the "Asean Unity" for carriage on a voyage from East Malaysia to Kandla, India. SOM was named as notify party.

3 The Defendants' case is that to the knowledge and with the consent of the Plaintiffs, the Sarawak round logs were delivered at Kandla to receivers against the presentation of switched bills of lading. The Plaintiffs are therefore estopped from suing on the original bills. Furthermore, the switched bills replaced the original bills and it was never the Plaintiffs' intention to make use of the original bills as documents of title to take delivery of the consignments.

4 The action herein was commenced on 21 February 2002. About sixteen months later, the Plaintiffs on 25 June 2003 sought and obtained a mareva injunction to, inter alia, restrain the Defendants from dealing with or disposing of the "Asean Unity". The Defendants applied on 20 August 2003 to set aside the injunction obtained on 1 July 2003. I discharged the injunction and the Plaintiffs have now appealed against my decision.

5 The Defendants opposed the injunction on the ground that the Plaintiffs have not established any risk of dissipation of assets. The second ground is the delay in applying for the injunction. It was applied for sixteen months after the writ was issued.

6 On the risk of dissipation of assets, the Plaintiffs were relying on the sale of the "Asean Ranger" in July 2002 to infer risk of dissipation especially when the same people are behind the Golden Star Maritime Pte Ltd ("Golden Star") and the Defendants.

7 UCO Bank had separately sued Golden Star as the registered owner of "Asean Ranger" in the

High Court on 16 January 2002, the short title of which is Suit No. 56 of 2002/K. The "*Asean Ranger*" was sold as scrap in July 2002. UCO Bank concluded that the sale of "*Asean Ranger*" (which was the only asset of Golden Star within six months of the suit) was intended to avoid any attachment or enforcement for which a judgment against them in Suit No. 56 of 2002/K may bring. Mr. G. V. Ramanadham, a senior manager of the Plaintiffs, deposed in an affidavit filed in these proceedings that the Plaintiffs believed that there is a real risk that the Defendants would likewise dissipate their assets before the conclusion of these proceedings. They relied on the Defendants' relationship with Golden Star and the fact that before she was scrapped, Glory Ship Management managed both "*Asean Ranger*" and "*Asean Unity*".

8 It is common ground that the Golden Star and the Defendants are one-ship companies. The Defendants have four directors. Three of the directors of the Defendants, Ng Kim Choon, Ng San San and Ng Tie Jin, are also directors of Golden Star. Ng Kim Choon and Ng Tie Jin are also shareholders of Golden Star. The fourth director, Ng Tee Ghee is a shareholder of the Defendants but he is neither a director nor shareholder of Golden Star. Ng San San is not a shareholder of the Defendants. The four directors of the Defendants are also directors of Glory Ship Management together with one Chuat Guat Keow. The shareholders are Ng Kim Choon, Ng Tie Jin and Chuat Guat Keow.

9 In the case of "*Asean Ranger*", she was sold as scrapped six months after the action started against Golden Star. Counsel for the Plaintiffs, Mr. Dylan Lee, argued that because Golden Star is a one-ship company and with the sale of its only trading asset, the company has ceased business and that in itself is evidence of risk of dissipation. He relied on the decision of *Guan Chong Cocoa Manufacturer Sdn Bhd v Pratiwi Shipping SA* [2003] 1SLR 157 in support of his contention.

10 In *Guan Chong Cocoa Manufacturer Sdn Bhd v Pratiwi Shipping SA*, the Court of Appeal said that the test whether a refusal of a *mareva* injunction would involve a real risk that a judgment in favour of the plaintiffs would remain unsatisfied is an objective one. The evidence must reasonably have a bearing on the risk factor and Chao JA said that a good piece of evidence would be where the defendant, for no sufficient reason, starts to put his property up for sale or where a company just ceases business.

11 In this case, it is not possible to infer from the sale of the "*Asean Ranger*" evidence of a propensity to dispose of or dissipate assets before judgment where Golden Star and the Defendants are related companies in the sense that they have some common directors and shareholders. Ng Tie Jin explained in his affidavit filed in Suit No. 56 of 2002 that the "*Asean Ranger*" was sold as she was at the end of her trading life. She was a 25-year old vessel and given her condition it was neither economical nor commercially viable to continue to trade her. To continue to do so would mean expensive repairs in order to pass surveys required by the vessel's classification society to keep her in class to retain her trading certificates. The "*Asean Ranger*" was due for dry docking survey (due every thirty months) on 13 June 2002. Her owners continued to operate her until the last possible moment before the dry docking survey. Come that point in time she was sold as scrap on 9 July 2002. The sale of the "*Asean Ranger*" was legitimate and in the ordinary course of Golden Star's business as shipowner. Mr. Ng said that "it had become commercially untenable to maintain the vessel any longer." He further explained that it is not unusual to scrap a vessel that is 25 years old under those circumstances. His explanation was perfectly plausible and a common occurrence in the shipping circle.

12 Mr. Ng in his affidavit filed in this action pointed out that the "*Asean Unity*" is still trading and the company is still very much in business. Her trading certificates have been extended to 2005. In the case of "*Asean Unity*", there is evidence of intention to continue to operate the vessel. Her Safety Management Certificate was renewed as recent as 28 May 2003 and is valid until 4 May 2008.

Her Class Certificate was issued on 11 April 2002 after the date of the Writ and this Class Certificate (based on an annual survey on 19 November 2002) is good until 19 November 2006. This vessel having undergone Special Survey on 9 January 2002 obtained a renewal of the International Load Line Certificate and her other certificates on 11 April 2002. They are valid until 19 November 2006. Even though both vessels are of the same vintage, the condition of "*Asean Unity*" is by and large better in terms of her hull and machinery than the "*Asean Ranger*".

13 The Defendants' audited accounts for the financial year ending 30 June 2002 showed net current assets to be \$929,114 and the book value of the vessel as \$1.88 million. The vessel is not mortgaged and there is no registered charge against the assets of the company. The claim amount is relatively small by comparison and the company has adequate resources to pay a claim of this size. Mr. Ng stated in his affidavit that the "*Asean Unity*" is a profitable vessel. In the circumstances, there is no risk that a judgment in favour of the Plaintiffs would be unsatisfied. It is contrary to business sense for the Defendants to deliberately run down their profitable operations just to avoid a relatively small claim of US\$330,415.03.

14 In *Guan Chong Cocoa Manufacturer Sdn Bhd v Pratiwi Shipping SA*, the owner was a Panamanian company and the corporate law there is so lax that nothing is known about the company. There is hardly any available public information about the officers and shareholders of the corporation. The use of bearer shares provide those who wish to operate under a cloak of secrecy an advantage and convenience but they may suffer the disadvantage of having a mareva injunction granted against them as the corporate structure itself invites comment. See Lord Denning in *Third Chandris Corp'n v Unimarine S.A.* [1979] QB 645 at 669 where he described such companies to be as the elusive as the Cheshire Cat. Here we are dealing with the Defendant, a company incorporated in Singapore and whose vessel is registered in Singapore. Only those companies which are properly capitalised as required under the Merchant Shipping (Registration of Ships) Regulations would be allowed to register their vessels in Singapore. The regulations also prescribe that an application for registration of a vessel in Singapore would have to provide particulars of those in control of the company. The regulations also require the particulars to be updated. Mr. Lee's suggestion that as the Defendants are an exempt private company only annual returns would be filed is an added reason to grant an injunction. This is a non-starter. In any case, the Defendants have already disclosed their audited accounts to the Plaintiffs.

15 It is common ground that the Golden Orient Maritime Ltd the registered owner of "*Asean Success*" and Golden Shore Maritime Pte Ltd the registered owners of "*Asean Pioneer*" have counter sued in India the cargo receivers and SOM. This counter suit is significant for the reason that it is cogent evidence in favour of the directors of the Defendants. If the directors and shareholders of a company had ceased business and sold the only trading asset of the company in order to make the company judgment proof, it is illogical for them to even bother to sue in India, the Indian receivers and SOM. It is skewed to interpret the sale and cessation of business as risk of dissipation of assets when the overall evidence is to the contrary.

16 *Pek Seng Co Pte Ltd v Low Tin Kee & Ors* [1989] SLR 890 is distinguishable. In that case, there was evidence of fraud and the court there was prepared in those circumstances to grant an injunction over the assets of subsidiaries in respect of a claim against the holding company. Even in the absence of fraud, in the exercise of discretion in relation to injunctive relief, the "eye of equity" would look beyond the corporate structure where the circumstances so require, (see *The Coral Rose* [1991]1 Lloyd's Rep. 563 at 568). This is not a case of a holding company that owned and controlled the five vessels through single ship-owning companies. Where single ship-owning companies whose directors and shareholders are by and large common, the "eye of equity" could also in a proper case probe further to see who are the persons who control the companies.

17 The injunction was sought some 16 months after the action started and more than a year after the "*Asean Ranger*" was scrapped. The Plaintiffs' response is that they only found out about the sale not too long ago. If that were so, the delay could not be held against them. Generally, delay in taking out such an application is a factor the court could take into consideration in exercising its discretion. A failure to act promptly in the absence of satisfactory is a ground for refusing a grant of or setting aside of an injunction. See *Best Electronics Sdn Bhd v Chen Li Yeng* [1997] 167 MLJU 1; *Dynasty Rangers (M) Sdn Bhd v SBSK Plantations Sdn Bhd* [2001] 439 MLJU 1.

18 For these reasons, I allowed the Defendants' application with costs.

Copyright © Government of Singapore.