Pilkadaris Terry and others *v* Asian Tour (Tournament Players Division) Pte Ltd and another suit
[2010] SGHC 294

Case Number : Suit No 551 of 2010 (Summons No 3510 of 2010) and Suit No 624 of 2010 (Summons No 3887 of 2010)

Decision Date : 06 October 2010

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Christopher Anand Daniel and Ganga Avadiar (Advocatus Law LLP) for the plaintiffs; Simon Yuen (Legal Clinic LLC) for the defendant.

Parties : Pilkadaris Terry and others — Asian Tour (Tournament Players Division) Pte Ltd

Injunctions

6 October 2010

Choo Han Teck J:

1 The first to third plaintiffs in this suit are also the plaintiffs in Suit No 624 of 2010. The fourth plaintiffs in the two suits are different as they had taken only one action each. The plaintiffs in both suits are all professional golfers. The issues in both suits are identical. The present matter arose from an application by the plaintiffs for an interim injunction pending the trial of the two suits. The defendant is the same party in both suits.

2 The plaintiffs are all player-members of an association known as Asian Tour Limited ("ATL"), a public company limited by guarantee. The defendant is a private limited company limited by shares and is a wholly owned subsidiary of ATL. The plaintiffs have no shares or interest in the defendant save in their membership in ATL. The ATL is an association for professional golfers and one of its main objects is to promote the welfare of the golfers. The relationship between the ATL and its members is governed by the Memorandum & Articles of Association of the company ("the M&A") and the bye-laws passed by virtue of the M&A. The bye-laws are published in the Members Handbook.

3 The plaintiffs were penalised by ATL for breaches of the bye-laws in that they played in tournaments not sanctioned by the ATL. The plaintiffs were fined US$5,000 for each tournament they so played, and were barred by the ATL from playing in any ATL sanctioned tournament until the fines had been paid. Some of the fines had not been paid.

4 The main claim by the plaintiffs in the two suits is for a declaration that regulations 1.10 of the ATL Members Handbook 2010 is "null and void for being in unreasonable restraint of trade". Mr Daniel, counsel for the plaintiffs submitted that the plaintiffs should be granted the interim relief of certain injunctions restraining the defendant from taking any steps to prevent the plaintiffs from playing in any golf tournament because the balance of convenience lie in their favour. He argued that the players need to earn professional points by playing in tournaments so that they qualify to play in future tournaments. Furthermore, if they are not allowed to play, they will lose the opportunity of winning prize money which in some tournaments may be in the million dollar category. Against that, counsel submitted, the ATL can quantify its damages by fining them for each of the tournaments they play should the plaintiffs lose the actions.

5 That takes us to the point that Mr Yuen, counsel for the defendant submitted – the suit should be against the ATL and not the defendant which was incorporated to carry out the secretarial and administrative functions for the ATL. The defendant has no contractual or any other legal relationship with the plaintiffs or any of the more than 200 members of the ATL. I agree with Mr Yuen. On this point alone the applications for interim relief must be refused. It is a hole-in-one for Mr Yuen. Maybe Mr Daniel has reserved an esoteric point in law to show that the defendant was the right party sued – but he has not yet done so.

6 In any event, I do not think that I ought to exercise my discretion in granting the applications although I am of the view that every sportsman deserves a sporting chance; but sportsmen play by the rules. Pursuant to the bye-laws the plaintiffs appealed to the appellate board constituted under the bye-laws and they were given time to prepare their appeals. In one case the penalty was waived and in another it was reduced. The rest were upheld by the appellate board which included professional golfers who are also members of the ATL (just like the plaintiffs). There was no complaint that the appeal process was flawed or wrong. The claim was that the rule preventing them from playing in non-sanctioned tournaments constituted an unreasonable restraint of trade and should be nullified. One of the reasons for professional golfers to form associations like the ATL was to gain bargaining strength with tournament sponsors and organisers. The bye-laws help to cohere the body of professional golfers so that the association is united and strong. The members are at liberty to leave the association for any reason. The plaintiffs, however, had all chosen to renew their annual membership this year. The plaintiffs are entitled to challenge the legality of the bye-laws, but that is a matter for the trial. On the face of the available evidence and arguments, the plaintiffs may have an arguable case, although not a convincing one (against the ATL).

7 The plaintiffs' case was not strictly a restraint of trade clause that applies after an employee leaves the employer's employ. This was a case of the members challenging the bye-laws of an association they had joined. I am not persuaded at this point that the court should decide whether the bye-law in question was unreasonable, and even if so, whether it ought to be nullified by the court. The courts would not interfere with an association's bye-laws especially if no effort had been made by the members to challenge them within the regulations themselves. Hence, if the plaintiffs are right they have to produce a stronger argument at trial.

8 Although it may appear that there was ostensibly little for the ATL to lose if the plaintiffs were allowed to play in non-sanctioned tournaments, the authority of the ATL would be undermined. The rules are clear and the majority of the players understand and are abiding by them. The plaintiffs want the chance to win millions of dollars in prize money which they get to keep because the ATL would not be entitled to them as damages in the event that the plaintiffs lose the suits. This was a superficially attractive argument based on the balance of convenience, but at the moment, for the arguments submitted, I do not think that the plaintiffs have a case on the merits. If they were to succeed at trial, it will not be on the arguments and the evidence presently before me. I was therefore of the view that no interim injunction would be justified and the applications under both suits were dismissed, with costs in the cause.