UDL Marine (Singapore) Pte Ltd *v* Jurong Town Corp
[2011] SGHC 153

Case Number : Suit No 502 of 2010/Y (SUM No. 4370 of 2010/G)

Decision Date : 17 June 2011

Tribunal/Court : High Court

Coram : Kan Ting Chiu J

Counsel Name(s) : Thio Shen Yi SC, Ang Wee Tiong and Olivia Low Pei Sze (TSMP Law Corporation) for the plaintiff; Dhillon Dinesh Singh and Felicia Tan May Lian (Allen & Gledhill LLP) for the defendant.

Parties : UDL Marine (Singapore) Pte Ltd — Jurong Town Corp

Civil Procedure

Injunctions

17 June 2011

Kan Ting Chiu J:

1 The plaintiff, UDL Marine (Singapore) Pte Ltd ("UDL"), had sued the defendant, Jurong Town Corporation ("JTC"). Pending the disposal of the action, UDL applied for an interim injunction against JTC. I dismissed UDL's application, and UDL has appealed against my decision.

2 UDL has operated a shipyard on premises at Benoi Road, Singapore ("the premises") since 1991. The premises were leased from JTC. The lease was scheduled to expire on 31 December 2010. UDL had wanted to renew the lease, but JTC refused to renew it.

3 On 21 July 2010, UDL filed these proceedings against JTC to seek a declaration that JTC is estopped from refusing to renew the lease or granting a new lease of the premises for a period of not less than 20 years; for an order of specific performance for JTC to renew or grant a new lease; and for damages.

4 On 16 September 2010, UDL filed a summons for an interim injunction to restrain JTC from leasing out the premises to any other party pending the final determination of the action and an order that UDL be permitted to lease, occupy and enjoy exclusive use of the premises upon payment of the current rent or the rent at the market rate.

5 The action and the summons were based on the same alleged facts which were set out in the Statement of Claim in this action and the affidavit of Leung Yat Tung, Managing Director of UDL, dated 16 September 2010 which was filed in support of the summons ("the supporting affidavit"). The allegation was essentially that representations were made to UDL that the lease of the premises might be renewed.

6 UDL's case was that in December 2004, it understood that the lease would not be extended beyond 11 December 2010 as JTC had plans to re-develop the Tuas area. However in February 2005, UDL received information from Sidat Senanayake, an officer of the Economic Development Board ("EDB"). The information was narrated in the supporting affidavit and incorporated in paras 8 to 13 of

the Statement of Claim and was characterised by UDL as representations:

The Representation

8. The Plaintiff told the EDB that their decision was based on the understanding that the Tuas area was to be re-developed and the Lease would not be extended beyond 31 December 2010. The Plaintiff had mentioned this issue specifically with the EDB and also asked that the EDB clarify the correctness of this position. Mr Sidat then represented to the Plaintiff that, as a yet to be published policy, the Defendant had decided to postpone the redevelopment of the area and would grant extensions of 20 years for the yards in the area including the Premises. Given this new development, the EDB requested that the Plaintiff reconsider the Potential Sale and to maintain their business in Singapore.

9. The Plaintiff then asked for clear confirmation by the EDB of their representations and assurances that the lease for the premises would be available for an extension of 20 years.

10. Some time in or about early March 2005, Mr Sidat met with the Plaintiff's Mr Leung at the EDB's offices. Mr Sidat repeated the representations by the EDB and went on to inform and assure Mr Leung that, after checking and confirming with the Defendant on the matter of lease extensions, what the EDB had told the Plaintiff previously was correct and that the EDB would help and render the necessary assistance to procure the extension of the Lease and that the Plaintiff should therefore withdraw from the Potential Sale. As far as the Plaintiff knows, the Defendant was therefore aware of the representations and assurances made by the EDB to the Plaintiff.

11. Given the representations and assurances of the EDB and believing that the EDB spoke for and on behalf of the Defendant, with the Defendant's express or implied consent, and that the Lease would therefore be renewed by the Defendant, the Plaintiff withdrew from the Potential Sale in reliance on the representations and assurances as communicated to the Plaintiff.

12. On or about 13 April 2005, Mr Leung and the Plaintiff's Ms Gillian Leung ("Ms Gillian") met with Mr Sidat. Mr Leung told Mr Sidat that following the assurances and representations of Mr Sidat, the Plaintiff had called off the Potential Sale. Mr Leung then raised the issue that the Defendant might not, as a matter of practice, entertain any application for an extension of the Lease given that the unexpired term for the Lease was about 5 years at that time. Mr Sidat said that he would speak to the Defendant about this but did not expect any difficulty in this regard.

13. With regard to the abovementioned, on 26 May 2005, Mr Sidat wrote to the Plaintiff stating as follows:

"*Dear Mr Leung*,

my apologies for not responding sooner.

We have discussed the matter with JTC, who is agreeable to consider such a conditional extension for UDL .

This is subject to EDB's support and we would therefore look forward to receiving a proposal from UDL on your proposed plans for the site.

Jen Siang has returned from his overseas travels, so you can follow-up on this directly with him.

thank you & best regards,

Sidat"

[underline added]

7 In paras 14 to 15 of its Statement of Claim, UDL alleged that the representations were made with JTC's knowledge and/or consent and stated that it relied on the representations and re-structured its shareholdings so that it became the subsidiary of UDL Holdings Ltd, a company listed on the Stock Exchange of Hong Kong, produced business plans at the request of the EDB, and held concurrent discussions with the EDB and JTC.

8 Paragraphs 17 and 18 of the Statement of Claim disclosed the process by which UDL drew its conclusions on the events:

17. Given the EDB's previous assurances, the Plaintiff presented the business plan to the Defendant's Mr Ernest Tay on or about 22 July 2008. At the time, there were no adverse comments from Mr Ernest Tay nor any intimation that the Plaintiff's business plan was in any way flawed or unacceptable. Instead, Mr Ernest Tay told the Plaintiff to *submit a formal application* for renewal of the Lease.

18. In reliance on the Defendant's representation that the Lease *renewal was now a matter of formality*, and also the prior representations by the EDB (of which the Defendant had knowledge), the Plaintiff increased its share capital to $10 million, fully paid-up by its parent UDL Holdings Limited, as it expected the renewal of the Lease for 20 years would be given shortly and that the capital investment as set out in the Plaintiff's business plan submitted to the Defendant would be required soon.

[emphasis added]

9 There was something else that was brought up after the Statement of Claim was filed and the parties had filed their affidavits in connection with the application. In para 20 of its skeletal submissions dated 3 November 2010, UDL referred to an email from Ernest Tay of JTC to his colleague Karen Lee dated 20 December 2005, that:

... *it seems like EDB is sending a wrong signal or message to the coy that so long they have a fantastic idea/vision, EDB will support their plans and JTC will grant them the renewal. This is not true as we need to perform our own assessments. Perhaps, it is good to highlight to EDB (indirectly) when you meet them the next time as it is creating unnecessary confusion on ground*.

[emphasis in original]

The email had not been referred to in the Statement of Claim or the supporting affidavit, and the full text of the email was not set out. After quoting that portion of the email, UDL submitted that "[t]here is no evidence whatsoever that Ms Karen Lee or any other officer of the Defendant had in fact told EDB to stop sending the "*wrong signal or message*" to the Plaintiff" and it was submitted that "[t]he email suggests that representations of the nature alleged by the Plaintiffs were in fact made." I find,

on my reading of the email, no indication that the JTC had made or authorised any representations that may have been made by EDB, and that JTC *had not* made any decision to renew the lease and *did not* share or agree with EDB's perceived support for a renewal.

10 UDL's case is stated in its Statement of Claim [note: 1] and its skeletal submissions [note: 2] to be founded on proprietary estoppel flowing from the alleged representations. It is therefore important to look at the parties' positions on the representations.

11 UDL's position has been set out in the foregoing paragraphs. For JTC, Loh Yew Pong, a Deputy Director of its Aerospace, Marine and Cleantech Cluster, filed an affidavit on 15 October 2010. He stated in clear terms in his affidavit that EDB is not the agent of JTC:

> 26. The Plaintiff has assumed throughout its pleadings and the [supporting affidavit] filed on behalf of the Plaintiff, that the EDB is some sort of agent of the Defendant, that the EDB could speak for and on behalf of the Defendant. I must correct this baseless misconception that pervades the Plaintiff's statements.
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> 27. The EDB is a separate entity from the Defendant, a different statutory board with different functions from the Defendant to discharge, and is not an agent of the Defendant. There is no basis for the Plaintiff to assume that EDB's actions would bind the Defendant.

12 Sidat Senanayake also deposed an affidavit. He stated that he was an officer of the EDB from July 2003 to August 2007, first as a Senior Officer of the Industry Promotion Division and then as Assistant Head of the Logistics and Transport Cluster from April 2007. He deposed that:

> 10 Sometime in February and March 2005, I contacted the Plaintiff, as part and parcel of my work to understand the needs of businesses in Singapore. However, I did not make the alleged representations set out in paragraphs 7.6, 7.7 and 7.8 of the [supporting affidavit].
>
> a. Not only did I not make the alleged representations, for the sake of clarity I would also add that based on my experience in EDB, EDB is a separate statutory board from the Defendant.
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> b. As an employee of the EDB, I could not have been in the position to represent considerations and decisions of the Defendant. I was aware of this at the material time.
>
> c. Had the Plaintiff raised concerns and doubts to me which pertained to matters involving the Defendant or the Defendant's discretion, I would have directed the Plaintiff to directly contact the Defendant.
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> d. In particular, contrary to the last sentence of paragraph 7.8 of the [supporting affidavit], I did not "[add] that ... the Plaintiff should therefore withdraw from the potential sale [of the Premises] and maintain their business in Singapore at the Premises". It would have been outside my empowerment to so recommend or instruct the Plaintiff.
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> 11. With regard to paragraph 7.9 of the [supporting affidavit], while I met with Mr. Leung Yat Tung ("Mr. Leung") some time in early 2005, I recall that I had informed Mr. Leung that JTC was aware that the Plaintiff would like to apply for a lease renewal. However I did not tell Mr. Leung that "*[I] therefore did not foresee any difficulty to a renewal notwithstanding the unexpired term of the Lease*."

[emphasis in original]

13 The principles on which interim injunctions are to be granted are set down in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 ("*American Cyanamid*") at 407 and 408 by Lord Diplock. The first principle is:

> The court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried.

At this stage, the court will not endeavour to resolve conflicts of evidence, and will accept the claim at face value:

> ... unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial ...

14 The second principle is that if the court is so satisfied:

> ... the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.

The balance of convenience is determined on the basis that:

> If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage.

but:

> If, on the other hand, damages would not provide an adequate remedy for the plaintiff in the event of his succeeding at the trial, the court should then consider whether, on the contrary hypothesis that the defendant were to succeed at the trial in establishing his right to do that which was sought to be enjoined, he would be adequately compensated under the plaintiff's undertaking as to damages for the loss he would have sustained by being prevented from doing so between the time of the application and the time of the trial. If damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiff would be in a financial position to pay them, there would be no reason upon this ground to refuse an interlocutory injunction.

15 The first requirement for a serious question to be tried or the real prospect of success was expanded on and explained in *In re Lord Cable, Decd. Garratt and Others v Waters and Others* [1977] 1 WLR 7 ("*In re Lord Cable, decd*") at 19 and 20 by Slade J:

> On any claim for an interlocutory injunction the court must still, as a first step, consider whether the evidence available to the court discloses or fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial; if the available evidence fails to disclose this, the motion must fail in limine and questions of balance of convenience will not fall to be considered at all ...
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> ...

> ... *it is still necessary for any plaintiff who is seeking interlocutory relief to adduce sufficiently precise factual evidence to satisfy the court that he has a real prospect of succeeding in his claim for a permanent injunction at the trial. If the facts adduced by him in support of his motion do not by themselves suffice to satisfy the court as to this, he cannot ... expect it to assist him by inventing hypotheses of fact upon which he might have a real prospect of success*. For example, if he wishes the court to grant him relief on the basis that another person has at all material times held certain assets as nominee for a third party, he must adduce sufficient factual evidence to show both the grounds upon which such claim is made and that he has a real prospect of establishing that such assets are so held ...
>
> [emphasis added]

and this exposition of the requirement has been adopted in subsequent cases when the first principle was applied. The portion of Slade J's judgment which I have italicised was cited with approval in the Court of Appeal's decision in *Middlebrook Mushrooms Ltd v Transport and General Workers' Union and Others* [1993] ICR 612 by Hoffmann LJ. Slade J's judgment was referred to and followed more recently in *Novartis AG v Dexcel-Pharma Ltd* [2008] FSR 31.

16 It is clear from *American Cyanamid* and *In re Lord Cable, decd* that an applicant has to go beyond pleading a course of action to obtain an interim injunction. The applicant has to present the material or evidence to show that it has a real prospect of succeeding in its action. This is necessary because it takes little to raise a serious question for trial. An applicant has to establish a connection between the facts in his case and the question for trial because there can be no entitlement to any relief on the latter without the former.

17 When I applied the "real prospect of succeeding" test, I dealt with the material and evidence with care. I took the material and evidence presented by UDL at face value, as the sum of its case at the present stage of the proceedings. I was, however, more restrictive in the treatment of the evidence of JTC, and only looked for admissions which supported UDL's application or unrebutted refutations of any of UDL's allegations, and I did not find any such admissions or refutations. I took this approach in view of Lord Diplock's caution in *American Cyanamid* that:

> It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial.

18 When the material and evidence presented by UDL were examined, it was clear that:

(a) UDL had not produced any contemporaneous note or record of the alleged representations;

(b) UDL did not verify with Sidat Senanayake, EDB or JTC at the time of the alleged representations that Sidat Senanayake was speaking on behalf of JTC when he made the alleged representations even though UDL had concurrent discussions with EDB and JTC on the renewal of the lease;

(c) UDL misunderstood (or misrepresented) JTC's request that UDL submits a formal application for the renewal of the lease to be a representation that the lease renewal was a matter of formality;

(d) as late as 26 May 2005, at the end of the period when the alleged representations were

made by Sidat Senanayake (see para 6 *supra*), he only stated that JTC was "agreeable to consider" UDL's request to extend the lease; and

(e) when UDL received JTC's letter of 20 November 2009 that the lease will not be renewed, it did not protest and remind JTC of the alleged representations.

19 The material and evidence presented by UDL did not disclose that UDL has a real prospect of succeeding in its claim on proprietary estoppel. Consequently, the application, as Slade J noted, must fail *in limine* and the question of balance of convenience will not fall to be considered. I therefore dismissed the application and ordered that there be an expedited trial of the action.

20 As my decision is under appeal, I will also deal with the second principle relating to the balance of convenience, first on whether damages would be an adequate remedy for UDL.

21 UDL contended in the supporting affidavit and its written submissions that damages would not be an adequate remedy because on its business plans, UDL expects to earn approximately $40 million in gross profits a year, and that even without the expanded activities contemplated in the business plan, it would earn about $1.8 million a year if it continued with its existing business activities. UDL also submitted that if it was denied a renewal of the lease, it would have to relocate its business, and that would result in a loss of its customers, goodwill and reputation which would be difficult to quantify.

22 Quite inexplicably, JTC did not respond to that submissions, but that did not mean that I should accept the submissions without examination. It is quite clear that the cessation of the lease would affect UDL's ability to carry on its business, unless it secured alternative premises, and it would be difficult to find premises of similar attributes in terms of location and size. In addition to that, if UDL is able to find alternative premises, and relocates its business operations, then it would be in the ironic position that if it succeeds in its claim it may not want to return to the premises because it may not require two sites for its operations.

23 It is apparent that if UDL succeeds in its claim, the quantification of its loss for lost income, goodwill and reputation would be contentious and difficult. In addition to that, monetary damages cannot adequately redress the effect of a forced relocation. For these reasons, I agree with UDL that damages would not be an adequate remedy.

24 JTC, on the other hand submitted that the loss and damages it may incur on an interim injunction would be immeasurable. [note: 3] It referred to (i) the loss of rent, land sale price, licensing fee or tender price; (ii) immeasurable loss of fixed asset investment on the land; and (iii) the loss of potential customers and the contributions they could make to the national economy. It was however, not explained how, if an interim injunction is granted pending the disposal of the pending action, the delay in the repossession of the premises over that period cannot be adequately compensated by damages. The premises and the demand for the premises will still be there, and any losses arising from the delay can be ascertained and quantified without too much difficulty.

25 In conclusion, I dismissed the application because UDL failed to show that its claim in proprietary estoppel had a real prospect of success. If it had a real prospect of success, its application would have been granted as it satisfied the second requirement for an interim injunction.

[note: 1] At para 34

[note: 2] At para 5

[note: 3] Defendant's Submissions, Part B, paras 63–74