

Full Fledge Holdings Ltd v Wisanggeni Lauw (No 2)
[2004] SGHC 209

Case Number : Suit 1341/2002
Decision Date : 20 September 2004
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Vinodh S Coomaraswamy and Kenneth Choo (Shook Lin and Bok) for plaintiff;
Tan Lee Cheng and Kenneth Leong (Harry Elias Partnership) for defendant
Parties : Full Fledge Holdings Ltd — Wisanggeni Lauw

Civil Procedure – Judgments and orders – Parties unable to agree on terms of judgment to be drawn and extracted – Whether amendment to statement of claim to be reflected in judgment – Whether further reliefs sought by plaintiff to be contained in judgment.

20 September 2004

Judgment reserved.

Kan Ting Chiu J:

1 After I had delivered my judgment ([2004] SGHC 141) in this action, counsel for the parties informed me that they were unable to agree with the terms of the judgment to be drawn and extracted.

2 The disagreement arose out of an amendment to prayer (a) of the Statement of Claim made on the first day of the trial. The original prayer was for “[t]he transfer of 10,625,000 UFS shares to the Bank of China for the account of Mr Kang Hwi Wah”.

3 At the commencement of the trial, when I sought clarification on the prayer, Mr Coomaraswamy, counsel for the plaintiff, applied to amend it to mirror the words of the letter of 28 June 2002 to read: “The transfer of 10,625,000 Poh Lian Holding Ltd (now known as UFS) shares to the Bank of China as collateral in favour of Kang Hwi Wah”. He explained that the effect of the amendment was to spell out the mode of performance for the transfer of the shares. He said:

[I]t is the mode of performance that was agreed. And the collateral, in effect, would be the Plaintiff furnishing the collateral.[\[1\]](#)

In other words, the plaintiff’s claim against the defendant was:

You are obliged to transfer these shares to us but in performance of that, we ask you to transfer it to the bank as collateral and then your obligation to us will be discharged.[\[2\]](#)

4 After leave was granted for the amendment, nothing was done to incorporate it into the Statement of Claim. Counsel were unable to agree whether the judgment for the transfer of the shares should follow the form of the prayer before or after the amendment. I am disappointed that it could not be resolved between them.

5 When Mr Coomaraswamy explained that the change related to the performance, and not to the nature of the obligation, there was no objection or protest from the defendant with regard to the amendment or the explanation given. The hearing proceeded on the basis that the prayer was amended. The judgment must reflect that. I direct that the plaintiff take steps to have the

amendment incorporated into the Statement of Claim, and that the judgment should reflect the prayer in its amended form.

6 The plaintiff also wanted the judgment to contain further reliefs as set out in the Plaintiffs' Further Submissions:

b. Provide that the Defendant is obliged to guarantee the minimum market value of UFS shares at \$0.17 cents; and

c. Providing [*sic*] that the Plaintiff shall be entitled to damages against the Defendant to be assessed once the damage has been crystallised.

7 They differed from the pleaded prayers in the Statement of Claim that:

(b) The Defendant's guarantee that the 10,625,000 UFS shares to be transferred to Bank of China shall have a market value of not less than S\$0.17 per share at the end of 12 months from 28th June 2002;

(c) Further and/or alternative to (a) and (b) above, damages to be assessed

8 Prayer (b) of the Plaintiff's Further Submissions is unnecessary because the guarantee was set out and delivered in the letter of 28 June itself. No further order for its delivery is needed.

9 It was unclear what the crystallisation of damages in prayer (c) of the Plaintiff's Further Submissions referred to, or when the crystallisation was to be. As I see it, damages may be payable if the share price was below 17 cents on 28 June 2003. However, this was not brought up in evidence or submissions at the trial. There was no evidence of the share price on that day, and no claim was made for this loss. Such a claim has to be expressly made, if necessary, by amending the Statement of Claim which was filed before 28 June 2003, but this was not done.

10 Evidently no thought was given to these matters until the judgment was being drafted. It cannot be added in at this stage of the proceedings when there is no basis for it. In the circumstances, there will be no orders in respect of prayers (b) and (c).

[\[1\]](#)Notes of Evidence pages 73-74

[\[2\]](#)Notes of Evidence page 74