Blenwel Agencies Pte Ltd v Tan Lee King
[2007] SGHC 181

Case Number : OS 1230/2007

Decision Date : 18 October 2007

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Carolyn Tan (Tan & Au LLP) for the plaintiff; Raymond Ng (Tan Lay Keng & Co) for the defendant

Parties : Blenwel Agencies Pte Ltd — Tan Lee King

Civil Procedure – Appeals – Leave – Leave to appeal to the Court of Appeal – Finality in matters to prevent excessive litigation

Courts and Jurisdiction – Appeals – Leave – Leave to appeal to the Court of Appeal – Finality in matters to prevent excessive litigation

18 October 2007

Choo Han Teck J:

1 This case started in the Magistrates' Court as MC Suit No 30163 of 2004 in which the plaintiff sued the defendant for damage to a wheel clamp belonging to the plaintiff. The undisputed facts were that the plaintiff, who is an operator of car park facilities, clamped the wheel of the defendant's car. The defendant drove away with the clamp and thereby damaged it. The matter was referred to the Primary Dispute Resolution Centre ("PDRC") at the Subordinate Courts before District Judge Ng Peng Hong ("DJ Ng") on 18 January 2007. At that time, the plaintiff was represented by Ms Carolyn Tan ("Ms Tan") and the defendant was unrepresented.

2 The parties resolved the matter by an agreement for the defendant to pay the plaintiff the sum of $3,000 in full and final settlement of its claim in two instalments. The first instalment of $1,500 was to be paid by 1 February 2007 and the second instalment of $1,500 was to be paid by 15 February 2007. The defendant went to Ms Tan's office on 1 February 2007 to pay the full sum of $3,000. However, the money was returned to the defendant when he refused to sign a joint press release drafted by Ms Tan. Consequently, the parties returned to the PDRC on 8 February 2007 where the defendant again tendered payment but was rejected by the plaintiff on account that the defendant did not agree to sign the joint press statement. The defendant deposed in his affidavit of 24 September 2007 that in the proceedings on 8 February 2007 DJ Ng told Ms Tan that the order he made at the PDRC on 18 January 2007 did not require the defendant to sign the joint press release. The relevant order merely stated:

> By consent a joint press statement to be issued by the parties stating that the defendant acknowledges the plaintiff's rights and the plaintiffs are entitled to carry out wheel clamping of vehicles which are illegally parked

3 The plaintiff then obtained, *ex parte*, a default judgment on 22 February 2007 for $5,000, being the sum of $3,000 and $2,000 costs. The default judgment was served on the defendant on 27 February 2007 and he was given three days to pay. The defendant then instructed Mr Raymond Ng ("Mr Ng") to apply to have the default judgment set aside. DJ James Leong ("DJ Leong") allowed the

application and set aside the default judgment with costs fixed at $1,500. At the hearing before DJ Leong, Mr Ng made two submissions:

(1) there was no default as the defendant had already tendered payment; and

(2) on the basis of the decision of Lai Siu Chiu J in *Lock Han Chng Jonathan v Goh Jessiline* [2007] 3 SLR 51 ("Jonathan Lock's case"), the PDRC was not a court.

DJ Leong refused leave to the plaintiff to appeal. Accordingly, the plaintiff, through Ms Tan, applied for leave to appeal to the High Court.

4 The application for leave to appeal was heard by me on 27 September 2007. Ms Tan insisted that there was an important point of law to be argued because she was of the view that Lai J's decision in Jonathan Lock's case should not be followed, and that since DJ Leong's decision was based on that decision, it should be reversed and the default judgment restored. The notes of the hearing before DJ Leong were brief and can be conveniently set out:

P/C: Applying to set aside default judgment. Applying at two levels, the triggering event did not occur as client, based on Plaintiff's affidavit, had gone to make payment which the Plaintiff returned. Secondly, refers to [2007] SGHC 58. As settlement was made at PDRC, it is not Court order but a contractual agreement on which Plaintiff can sue. Cannot enter judgment based on it.

P/C: Triggering event had occurred. Refers to affidavit of Ms Au. Mr Ng had confirmed no need for joint statement. There was clear breach of order entitling us to enter default judgment. He wanted to make payment in cash in front of Settlement Judge and wanted Judge to record settlement. Judge asked him to make payment to us separately. Since then, no payment made. As for [2007] SGHC 58, need time to read it.

Court: Allow time for Plaintiff to do so.

P/C: In view of [2007] SGHC 59, it would be binding.

Court: Appeal allowed. Judgment set aside in view of High Court decision in [2007] SGHC 58. Order of DR dismissing application with costs set aside. Costs to Defendant here and below fixed at$1500. No order on summons 8320/2007.

5 Ms Tan concentrated a large part of her arguments before me on the correctness of Jonathan Lock's case. Ms Tan and Mr Ng also tendered written submissions. Mr Ng pointed out that Ms Tan had accepted payment of $1,500 being the amount less costs of $1,500, awarded but that she did so without prejudice to her application for leave to appeal. Ms Tan submitted that her clients had already paid her $30,000 in costs and should thus be allowed to enforce the default judgment. I was of the view that the Jonathan Lock case was not material to Ms Tan's application for leave and, if at all, that case was not in her client's favour. It was my opinion that DJ Leong's decision should not be overturned and this matter should not proceed any further. The plaintiff was wrong to have entered default judgment on an *ex parte* basis. The defendant had tendered payment twice. That was once more than sufficient. I therefore refused leave to appeal.

6 Ms Tan applied for further arguments on 28 September 2007 but I declined to hear further arguments. By Originating Summons No 1484 of 2007, dated 5 October 2007, Ms Tan applied to me for leave to appeal to the Court of Appeal. I heard Ms Tan on 9 October 2007 and dismissed her application. There should be no leave to appeal against an order refusing leave to appeal; this rule is

necessary to ensure finality in matters where the legislature has deemed it fit to prevent excessive litigation. The present case is an example of such a case. The plaintiff's claim was no more than $3,000 but because of unreasonable insistence for the joint press release to be signed by the defendant, and the unwise release of the $3,000 paid to its solicitors by the defendant, the simple matter was not resolved expediently, and incurred $30,000 in legal costs instead. The plaintiff should not be allowed to advance one step further.