Ow Chor Seng v Coutts Bank (Schweiz) AG
[2002] SGHC 41

Case Number : Suit 1783/1999

Decision Date : 28 February 2002

Tribunal/Court : High Court

Coram : Lee Seiu Kin JC

Counsel Name(s) : Harpreet Singh Nehal (Drew & Napier LLC) for the plaintiff/respondent; Lionel Tay (Khattar Wong & Partners) for the defendant/appellant

Parties : Ow Chor Seng — Coutts Bank (Schweiz) AG

Civil Procedure – Judgments and orders – Judgment upon admissions of fact – Admission of liability by plaintiff in his pleading – Allegations of defendant's breach in plaintiff's pleadings – Whether admissions of fact alone can determine matter – Whether court can consider veracity of pleading or likelihood of success – Whether clear admission of fact exists to entitle defendant to enter judgment – O 27 r 3 Rules of Court

Civil Procedure Judgments and orders Judgment on admissions Whether there is a clear admission of fact that would entitle the other party to enter judgment based on those admissions

Facts

This is an appeal against the decision of the Senior Assistant Registrar in which he dismissed the application of the defendant bank for judgment against the plaintiff, Ow, under the counterclaim pursuant to O 27 r 3. The bank had counterclaimed against Ow for the repayment of the outstanding balances and interest in a facility. The bank applied for judgment on the basis that Ow had admitted that he was liable to the bank for the amount he had used to discharge an overdraft facility.

Held, dismissing the appeal:

(1) Order 27 r 3 relates to admissions of fact, whether in the pleadings or otherwise. If the liability turns on a question of law or mixed law and fact, admissions of fact alone cannot determine the matter (see 16); *Shunmugam Jayakumar v Jeyaretnam* [1997] 2 SLR 172 applied.

(2) Although Ow had admitted to drawing down the sum in question, he had pleaded that the bank was precluded from recovering from him in view of the alleged breaches of the Banking Act and MAS Notices. If he is right on this issue, then he would not be liable. To give judgment for the bank against Ow would determine this issue (see 17).

(3) In an application under Order 27 r 3, the court would only consider whether there is a clear admission of any fact that would entitle the other party to such judgment as he may be entitled to upon those admissions. The court would not examine the likelihood of success of any pleading – unlike in an application under Order 14. Order 27 r 3 is intended to provide an immediate judgment based on clear admissions of fact and there is no scope for any consideration of the veracity of the pleadings unless it is clearly untenable (see 17); *Rankine v Garton Sons & Co* Ltd [1979] 2 All ER 1185 applied.

Cases referred to

Blundell v Rimmer

[1971] 1 All ER 1072 (refd)

Ellis v Allen

Ellis v Allen

[1914] 1 Ch 904 (refd)

Rankine v Garton Sons & Co

Ltd [1979] 2 All ER 1185 (refd)

Shunmugam Jayakumar v Jeyaretnam

[1997] 2 SLR 172 (refd)

Legislation referred to

Rules of Court, Order 27 r 3

Judgment

GROUNDS OF DECISION

1 This is an appeal against the decision of the Senior Assistant Registrar in SIC 602105/2001 in which he dismissed the application of the Defendant ("the Bank") for judgment against the Plaintiff ("Ow") under the Bank's counterclaim in the sum of $10,767,707.18 under O 27, r 3 of the Rules of Court. On 8 January 2002, after hearing counsel for the parties, I dismissed the Bank's appeal with costs. On 6 February the Bank filed a notice of appeal against the whole of my decision and I now give my written grounds of decision.

Statement of Claim

2 The following are the salient points pleaded by Ow in his Statement of Claim. The Bank is incorporated in Switzerland and has a branch in Singapore. Ow had been a customer of the Bank since 23 April 1997, when he signed a Facility Agreement with the Bank in which he obtained a multi-currency overdraft facility of up to the equivalent of US$10 million ("the Facility"). At that time Ow had an overdraft account with the Bank of America ("BOA"). The sole purpose of this exercise was to obtain a Singapore dollar loan at a lower rate of interest than what he was paying in his BOA overdraft. His dealings with the Bank were conducted through Ho Yong Chong ("Ho"), an employee of the Bank at the material time. Prior to the opening of the Facility, Ho had represented to him that he could draw down on the Facility entirely in Singapore dollars notwithstanding that it was structured as a multi-currency facility. At all material times the Bank, through Ho, was fully aware that Ow wished to draw down on his loan in Singapore dollars in order to discharge his outstanding BOA overdraft which was in Singapore dollars. The Facility, which was secured by a mortgage over his wife's property, was opened in reliance upon Ho's representations.

3 On 28 July 1997 Ow, intending to draw down on the Facility to fully discharge his BOA overdraft which stood at approximately $10 million, went to see Ho about this. After checking with the Bank's Credit Manager, Ho advised Ow that the Bank did not have sufficient Singapore dollars at the time and only $3 million had been approved for drawdown. The balance sum could be drawn down in US dollars. Ho had represented to Ow at the time that, as the Bank was obliged to provide him with Singapore dollars under the Facility, it would shortly convert the US dollar drawdown into Singapore dollars. In reliance of this assurance, Ow proceeded with the drawdown partly in Singapore dollars and partly in US dollars and used it to discharge the BOA overdraft which stood at $10,767,707.18.

4 The Bank subsequently refused to convert the US dollar component of the drawdown to Singapore dollars despite his repeated requests on various dates in 1997 and 1998. The Bank gave the reason that it did not have sufficient Singapore dollars available to convert the whole of his drawings. When the 1997 economic crises hit in late 1997, Ow found that the amount purportedly outstanding in the foreign currency component of his drawings increased dramatically. The Facility Agreement provided for the drawdown to be within 80% of the value of the mortgaged property. Due to the currency fluctuation and falling property values, the Bank constantly pressured him to reduce the overdraft to keep it within the limit.

5 Ow further pleaded that another of the Bank's officers, Davartz, had asked him to introduce new customers to the Bank. In particular Davartz asked whether he could meet Ow's two sons, who were based in Johore Bahru, to discuss the opening of a Share Trading Account. Ow arranged for them to meet in Johore Bahru on 25 September 1997. Thereafter Ow's sons opened a Share Trading account with the Bank. Ow said that the express agreement or understanding was that this account would be separate and distinct from his accounts. The Bank subsequently reneged on that understanding and sought to treat the shares deposited by his sons as security for the Facility. His sons applied in the Malaysian courts for an injunction restraining the Bank from disposing their shares to settle Ow's debts. An injunction was granted. However the Bank breached the injunction and sold the shares in October 1999. This matter is the subject of legal proceedings in Malaysia.

6 On 29 July 1999 the Bank agreed to convert into Singapore dollars up to the equivalent of $10 million of the foreign currency component of the drawdown. The Bank refused to convert the entire foreign currency component. However on 30 August 1999 the Bank agreed to full conversion.

7 On 1 September 1999 the Bank made a written demand for Ow to make full payment of the sums of about $11.15 million and 558 million. The Bank gave Ow two options, either pay the sum of US$1.2 million by 6 September, or sign a mandate to the Bank to authorise it to realise all assets deposited and charged to it, without specifying what those assets were or whether they included the shares deposited by his sons in respect of their Share Trading Account. Ow did not accept either option. The Bank's solicitors, M/s Khattar Wong & Partners ("KWP"), sent a letter dated 8 September 1999 in which they gave notice of termination of the Facility and demanded full payment of the sums set out above.

8 On 8 October 1999 KWP wrote to Ow's wife demanding payment of the said sums. On 20 October, KWP served a notice on the mortgaged property requiring the occupiers to quit and deliver vacant possession within one month. On 3 December 1999 the Bank commenced an action in respect of the mortgaged property in OS 1883/1999 in respect of the following sums:

Principal advanced up to 12 October 1999:	$19,743,516.90
Principal repaid:	$ 3,867,554.13
Principal outstanding on 3 December 1999:	$15,993,367.51
Interest outstanding on 3 December 1999:	$ 37,595.37
Total outstanding on 3 December 1999:	$16,030,962.88

9 Ow claimed that he had suffered loss and damage arising from the Bank's failure to provide him with Singapore dollars for his initial drawdown in July 1997 and its subsequent failure to convert the foreign currency component to Singapore dollars. Ow prayed for a declaration that he was only liable to pay the Bank an amount represented by the Singapore dollar equivalent of his first drawdown on 28 July

1977 together with interest thereon less all sums paid into the account.

10 On 4 July 2000 Ow amended the Statement of Claim to include the pleading that in entering into the Facility Agreement, the Bank was in breach of s 29(1)(a) of the Banking Act as well as Monetary Authority of Singapore ("MAS") Notices 1001 and 1012 relating to limits on credit facilities to a single borrower. This amendment was made after further discovery by Ow's solicitors of documents from the Bank. Ow pleaded that such breach rendered the Facility Agreement illegal and this precluded the Bank from making any claim whatsoever against him in respect of the Facility. He prayed for a declaration that the Bank was precluded from claiming against him as a result of this breach.

Defence and Counterclaim

11 The Bank pleaded as follows in its Defence and Counterclaim. The Facility Agreement was expressly stated to be a multi-currency account. Ho had not made any of the representations alleged by Ow. The Bank had no obligation under the Facility Agreement to obtain sufficient Singapore dollars for Ow to drawdown on. All foreign currency drawdowns were made by Ow willingly and he had made use of the Facility to engage in currency speculation.

12 In respect of the alleged breaches of the Banking Act and MAS Notices, the Bank pleaded at no time had it committed any such breaches.

13 The Bank counterclaimed against Ow for the repayment of the outstanding balances in the Facility which, on 14 December 1999 stood at $15,875,962.77 in respect of the principal and $170,374.69 in respect of unpaid interest. The Bank also claimed further interest from 14 December 1999 and expenses and legal costs on an indemnity basis.

Application under O 27, r 3

14 The Bank's present application is under O 27, r 3 of the Rules of Court which provides as follows:

> **Judgment on admission of facts (O 27, r 3)**
>
> 3. Where admissions of fact are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the Court for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties, and the Court may give such judgment, or make such order, on the application as it thinks just.

15 Counsel for the Bank, Mr Tay, submitted that Ow had pleaded that he had drawn down the sum of $10,767,707.18 on 28 July 1997 to discharge the BOA overdraft account. Therefore Ow had admitted that he was liable to the Bank for at least that sum.

16 Order 27, r 3 relates to admissions of fact, whether in the pleadings or otherwise. If the liability turns on a question of law or mixed law and fact, admissions of fact alone cannot determine the matter – see *Shunmugam Jayakumar v Jeyaretnam* [1997] 2 SLR 172 at 35 & 36. Therefore where a defendant admits to negligence but denies causation there is no admission of liability – see *Blundell v Rimmer* [1971] 1 All ER 1072 which is approved by the Court of Appeal in *Rankine v Garton Sons & Co Ltd* [1979] 2 All ER 1185. There must be *"a clear admission of facts in the face of which it is*

impossible for the party making it to succeed"- per Sargant J. in *Ellis v Allen* [1914] 1 Ch. 904 at p.909. In that case the defendant's counsel was not able to show how, with the admissions made, the defendant would be able to succeed in defending the action. Sargant J. gave judgment against the defendant saying (at p.909):

> "I cannot conceive any circumstances which the defendant Allen could rely on as a defence to the action, having regard to the admissions made by the letter, and I hold that the plaintiff is entitled to judgment against him under [this rule]"

17 In the present case, although Ow had admitted to drawing down the sum in question he had, crucially, pleaded that the Bank was precluded from recovering from him in view of the alleged breaches of the Banking Act and MAS Notices. If he is right on this issue, then he would not be liable. To give judgment for the Bank against Ow would determine this issue. In an application under this rule the court would only consider whether there is a clear admission of any fact that would entitle the other party to such judgment as he may be entitled to upon those admissions. The court would not examine the likelihood of success of any pleading – unlike in an application under O 14. Order 27, r 3 is intended to provide an immediate judgment based on clear admissions of fact and there is no scope for any consideration of the veracity of the pleadings unless it is clearly untenable. In *Rankine v Garton Sons & Co Ltd*, Stephenson LJ. said at p.1190:

> "… the plaintiff is seeking immediate judgment on admissions of fact, and under the express terms of the rule under which he seeks it the court has to be satisfied that he is entitled to it, and to be entitled to it he has to prove both elements of his cause of action; and nothing short, it seems to me, of a clear admission of liability, both of negligence causing the accident and of damage resulting from the accident caused by the negligence, is enough to satisfy the requirements of the rule and to entitle him to judgment. If he cannot point to an admission in clear terms of both the necessary ingredients of his cause of action, he cannot get an interlocutory judgment. He must wait until the judge tries the issue of damages ..."

18 In the premises, I dismissed the Bank's appeal with costs.

Sgd:

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JUDICIAL COMMISSIONER