Acclaim Insurance Brokers Pte Ltd v Navigator Investment Services Ltd [2009] SGHC 12

Case Number : OS 1830/2007

Decision Date : 12 January 2009

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Oommen Mathew (instructed) and John Thomas (David Nayar and Vardan) for the plaintiff; Edmund Kronenburg and Vicki Loh (Tan Peng Chin LLC) for the defendant

Parties : Acclaim Insurance Brokers Pte Ltd — Navigator Investment Services Ltd

Arbitration – Stay of court proceedings

12 January 2009 Judgment reserved

Choo Han Teck J:

1 The plaintiffs in this Originating Summons No 1830 of 2007 are vendors of financial products and had entered into a contract with the defendants to promote and distribute financial products offered by the defendants. On 14 December 2007 one Edward Wong and a company called Stralos Services Pte Ltd sued the plaintiffs in an action commenced by them in Suit 781 of 2007. That action was for unpaid commissions due to them. The plaintiffs here filed the present Originating Summons on 17 December 2007 seeking pre-action discovery against the defendants on the grounds that Edward Wong and Stralos Services conspired with others including the defendants. This Originating Summons was scheduled to be heard on 14 January 2008. The plaintiffs had in the meantime filed their defence to the Edward Wong suit on 9 January 2008 asserting their conspiracy claim. A few days prior to the scheduled hearing, that is, on 11 January 2008 the defendants filed an urgent summons (Summons No 130 of 2008) praying that this Originating Summons be stayed because there was an arbitration clause in the contract between the plaintiffs and the defendants. That summons was fixed to be heard together with this Originating Summons and a Pre-trial conference scheduled for them was fixed to be heard on 6 February 2008. That was adjourned to 19 February 2008, and then to 11 March 2008. After a couple more pre-trial hearings, the defendants' Summons No 130 of 2008 was scheduled to be heard on 6 May 2008. The Assistant registrar reserved judgment. The plaintiffs and the defendants then attempted to negotiate a settlement and the judgment was thus held in abeyance. The negotiations failed and the assistant registrar had in the meantime left the registry. The matter was heard again on 28 August 2008 and the defendants succeeded in adjourning the hearing to 25 September 2008, and again to 25 September 2008 when it was finally heard and dismissed. The defendants thus appealed against that order which was the appeal now before me. The appeal first came up for hearing on 23 October 2008. Counsel requested for a special date as the matter was complicated. It was then adjourned to a special date, that is, 6 November 2008. On 6 November 2008 I gave directions for the filing of written submissions and reply submissions to be completed by 5 December 2008.

2 From the time the initial action in Suit No 781 of 2007 commenced to November 2008 several important matters occurred. First, on 10 January 2008 the defendants commenced Originating Summons No 53 of 2008 praying for an order restraining the plaintiffs from proceeding with this Originating Summons No 1830 of 2007 and that the dispute be referred to arbitration. They further prayed that one of the plaintiffs' affidavits (Anthony Lim, 17 December 2007) in this Originating

Summons be struck out and further, that the plaintiffs be enjoined from obtaining disclosure of the documents sought in this Originating Summons (a tautologous prayer). Originating Summons No 53 of 2008 was heard by another judge who made no orders on the prayers and ordered the defendants to pay costs of the Originating Summons (Originating Summons No 53 of 2008). This took place on 5 March 2008. On 18 April 2008 the defendants issued a notice of arbitration under their contract with the plaintiffs. It was an unusual action because at that point the plaintiffs and the defendants did not have any clear commercial dispute arising from the contract although allegations in tort had been made (in the Suit No 781 of 2007 action). The defendants' claim in the arbitration was to ask the arbitrator (Mr Warren Khoo) to find that the defendants were not in breach of their contract with the plaintiffs. The plaintiff, naturally, objected to the notice for arbitration. The plaintiffs were informed by the Singapore Industrial Arbitration Centre ("SIAC ") that the defendants could proceed if the plaintiffs decline to participate in the arbitration. Hence, the plaintiffs decided to join in the arbitration proceedings. There were much disagreement between the parties even in the arbitration process including the choice of arbitrator. Finally, after the intervention of the SIAC Mr Khoo was appointed on 19 June 2008. The arbitrator fixed the filing of the Defence in the arbitration to be 28 August 2008, which was the date of the hearing of the resumed hearing of the defendants summons (Summons 130 of 2008) before the registrar. Consequently, as a result of the present appeal the arbitration stalled after the filing of the Reply and had been in abeyance since.

3 Another important action took place in the interim. The defendants applied on 18 November 2008 (after my directions on the filing of submissions on the appeal) to amend their summons in Summons 130 of 2008 seeking to stay the proceedings in Originating Summons No 1830 of 2007 on the ground that the arbitration before Mr Khoo was an international arbitration under the International Arbitration Act, Cap 143A by which a stay of proceedings would be mandatory; whereas an arbitration under the Arbitration Act (Cap. 10) the court has a discretion not to order a stay. I will deal first with the late application to amend the summons. I need only point out that the arbitration concerned parties in Singapore on matters governed by Singapore law, and Singapore was the forum of the arbitration. In short, there was nothing to indicate why this matter comes under the International Arbitration Act, which applies when, inter alia, both parties consent to having their arbitration under it. The plaintiffs clearly did not. The defendants commenced the arbitration ostensibly under the Arbitration Act, and had taken an inordinately long time to claim that it was an international arbitration, a point that could have but was not made before either assistant registrars in previous hearings. The onus was a very high one on the defendants in these circumstances to show that this was an international arbitration. In view of the paucity of evidence and argument, I will not allow the amendment sought and dismiss that application accordingly.

4 Reverting to the appeal proper, the defendants argued that the matter was already under arbitration and there were no legislative provisions for pre-arbitration proceedings. Discovery was thus, a matter for determination by the arbitrator after the arbitration had begun. The arbitration process, unlike litigation, commences only after there is an identifiable dispute. Hence, a pre-arbitration discovery process would be anomalous with the concept of arbitration. Furthermore, the absence of legislative provisions for pre-arbitration discovery must imply that there was no reason to stop a party from applying to court for a pre-action discovery. If the court thinks that there are no grounds for making the order of discovery the application would be dismissed, but it would be dismissed in the process of a civil action. It is only when a dispute is identified that the parties can refer to arbitration. If, for example, arising from the discovery the plaintiffs allege that the defendants were in breach of their contractual obligations, either party can commence the arbitration process. In the present case, the plaintiffs' application for pre-action discovery was made with litigation against various parties in mind and not just against the defendants. The basis was for an action in tort which might or might not overlap with their contractual rights against the defendants. In a multi-faceted action such as that which the plaintiffs were involved in, part of which they had no choice (Suit

No 781 of 2007) and part of which they might have, the discretion lay with the court in deciding whether this application for a stay of proceedings ought to be allowed. Furthermore, the commencement of the arbitration proceedings in this case was initiated on what seems to me to be dubious grounds only after the plaintiffs sought discovery. In these circumstances, I do not think that the registrar had erred in exercising his discretion not to order a stay. I would have done likewise. Accordingly, this appeal is dismissed. Costs are to follow the event and to be taxed if not agreed.