

Ting Kang Chung John v Teo Hee Lai Building Construction Pte Ltd and Others
[2008] SGHC 63

Case Number : OS 1807/2006, RA 400/2007
Decision Date : 29 April 2008
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Ng Yuen (Ng & Koh) for the plaintiff; Thulasidas s/o Rengasamy Suppramaniam (Ling Das & Partners) for the first Defendant; second Defendant in Person; Raman Gopalan (G R Law Corporation) for the third defendant
Parties : Ting Kang Chung John — Teo Hee Lai Building Construction Pte Ltd; Anwar Siraj; Khoo Cheng Neo Norma

Civil Procedure

29 April 2008

Judgment reserved.

Woo Bih Li J:

Background

1 The plaintiff Ting Kang Chung John ("Mr Ting") is an architect by profession. He was appointed by the President of the Singapore Institute of Architects to conduct arbitration proceedings between the first defendant Teo Hee Lai Building Construction Pte Ltd ("THL") on the one side and the second and third defendants who are Anwar Siraj ("Mr Siraj") and Khoo Cheng Neo Norma ("Mdm Khoo"), respectively, on the other side. Mdm Khoo is the wife of Mr Siraj.

2 The arbitration was apparently conducted between December 2001 and December 2003. The present originating summons, *ie*, Originating Summons No 1807 of 2006, is an action commenced by Mr Ting for an order that he be given an extension of time to 15 April 2005 to issue the arbitral award and that all the defendants jointly and severally pay him \$199,178.40 (this sum being his outstanding fee).

3 In Summons No 3348 of 2007, Mr Siraj applied, *inter alia*, for an order that Mr Ting produce certain documents referred to in Mr Siraj's Notice to Produce Documents for Inspection dated 12 July 2007. On 15 August 2007, Assistant Registrar Ms Lee Ti-Ting ("AR Lee") made an order ("AR Lee's order") pursuant to Mr Siraj's application. The first paragraph of AR Lee's order stated that inspection of the documents was to be at Mr Ting's counsel's office on 22 August 2007 from 10am to 6pm. The second paragraph stated that Mr Ting's counsel was to ensure that all documents in Mr Siraj's Notice of 12 July 2007 would be available for inspection.

4 Mr Siraj and his wife attended at the office of M/s Ng & Koh (Mr Ting's solicitors) on 22 August 2007. According to Mr Siraj, not all the documents which were supposed to have been made available for inspection were made available.

5 Eventually, Mr Siraj filed Summons No 4906 of 2007 and an affidavit (the "1 November 2007 affidavit") on 1 November 2007. The first two paragraphs of that application sought a court order to dismiss Mr Ting's action for failure to comply with AR Lee's order and an order of committal against Mr Ting and/or his counsel for the same non-compliance. Mr Siraj's application also sought alternative

reliefs for production and inspection of documents as well as the supply of documents which had allegedly been substituted by incorrect ones.

6 Summons No 4906 of 2007 was heard by Assistant Registrar Chung Yoon Joo ("AR Chung") on 12 December 2007. She declined to strike out Mr Ting's action or make any order of committal. Instead she made an order ("AR Chung's order") for inspection of certain documents (which I shall elaborate upon later) on 14 December 2007 between 4pm and 5pm and for Mr Ting's counsel to be personally present throughout the entire duration of the inspection. AR Chung's order also gave directions on the filing of affidavits and the hearing of Mr Ting's action.

7 Mr Siraj was dissatisfied with AR Chung's refusal to order a striking out and to make an order of committal. He filed an appeal which was heard by me on 17 January 2008. After hearing arguments, I dismissed his appeal. He has since filed an appeal against my decision to the Court of Appeal.

The court's reasons

8 On the day of inspection, *ie*, 22 August 2008, Mr Siraj issued a letter near the end of the inspection. It stated that he would like to purchase documents listed in an Appendix A. The letter may have been typed in advance with handwritten details inserted on 22 August 2008 itself. There were also additional handwritten comments which stated:

I also hereby record my strong objection and protest on your non-compliance of the abovementioned Order of Court. You phoned at about 4.20pm to say that you were not returning to the office. You thus evaded the need to clarify the missing documents eg S/No. 54 which was shown to your secretary and the confusion of adding documents of the same date not in the list and not conforming to the description given by the Plaintiff in his chronology.

9 Mr Siraj subsequently sent a letter dated 30 August 2007 to the Registrar which was accompanied or followed by an affidavit filed on 30 August 2007 (the "30 August 2007 affidavit"). Paragraph 2 of his affidavit set out five purposes for that affidavit:

- [a] clarify the Order of Court made on 15th August 2007;
- [b] sort out and ensure proper discovery/inspection of documents;
- [c] ensure the availability or delivery or collection of documents purchased within the time frame set by the Rules of Court; and [sic]
- [d] vary or amend or set new time lines for the filing of affidavits.
- [e] enhance costs and disbursements due to yet another obstructed and frustrated discovery process.

10 Paragraphs 15 to 29 dealt with the allegation of obstruction and frustration of discovery by Mr Ting's counsel.

11 Paragraphs 30 to 32 alleged that Mr Siraj had not received any document which he had paid for.

12 Significantly, paragraph 33 requested the court "to review the timelines set for the filing and service of affidavits". Therefore, although Mr Siraj had complained about the failure of Mr Ting's counsel to make discovery of documents, he had not yet asked for a striking out of Mr Ting's action

or for an order of committal.

13 Furthermore, paragraph 19 said that by about 4.30pm (on 22 August 2007), Mr Siraj and his wife had identified "that some documents were missing for example document listed S/No. 54 in the Plaintiff's chronology." The second allegation in that paragraph was that he had made a list of numerous documents which "could not be properly identified as the description in the Plaintiff's chronology differed from the documents made available for inspection".

14 Therefore, as far as the missing documents were concerned, Mr Siraj had identified only one specifically, *ie*, S/No. 54, in his earlier letter of 23 August 2007 and in this affidavit of 30 August 2007. In so far as the confusing description of documents was concerned, he had not listed out any of the documents in question.

15 It was only on 1 November 2007 that Mr Siraj filed Summons No 4906 of 2007 with an affidavit also filed the same day. Paragraphs 8 and 9 of that affidavit alleged that there was a failure to produce all the documents required for inspection. Paragraph 11 alleged that Ms Linda Wong, a secretary of Ng Yuen (Mr Ting's counsel) had noted that at least one document S/No. 54 was missing. Again, no other missing document was specifically identified.

16 Paragraph 27 of the 1 November 2007 affidavit alleged that of the 37 documents purchased by and supplied to Mr Siraj, some 14 had been substituted with other documents. Therefore, apparently by the time of the filing of that affidavit, Mr Siraj had received documents which he had sought copies of and paid for but his allegation became a different one, *ie*, that 14 of those documents he had received were not the ones he had wanted. However, again, he did not list out which 14 of the documents were in issue.

17 In response, Ng Yuen ("Mr Ng") filed an affidavit on 12 November 2007. In paragraph 4, Mr Ng said that he had left his office at about 4pm of 22 August 2007. In paragraph 5, Mr Ng said he had spoken to Mr Siraj at about 4.30pm that evening over the telephone and Mr Siraj had alleged that there were missing documents. He said he asked Mr Siraj to furnish him with a list of the alleged missing documents but Mr Siraj "snorted dismissively and stated that he would rather complain to the Court than to tell me which documents were allegedly missing. To-date I do not know which documents are alleged to be missing".

18 Paragraph 6 of Mr Ng's affidavit said that Mr Siraj's Notice to Produce (which was the subject of AR Lee's order) had not asked for inspection of S/No. 54 in Mr Ting's chronology but for S/No. 54(c). He said that there was no reason to hide the document listed as S/No. 54, which had in any event been inspected by Mr Siraj and his wife on 14 December 2006 pursuant to a first Notice to Produce from Mr Siraj dated 5 December 2006.

19 During oral submissions, Mr Ng elaborated that he had not noticed that when Mr Siraj had applied for an order for production and inspection (which AR Lee eventually made), the list of documents in question had a S/No. 54(c) which did not exist. It appeared that the counsel who represented Mr Ting on 15 August 2007 was one Ong Boon Kiat ("Mr Ong"). If he had pointed out to AR Lee that S/No. 54(c) did not exist before she made her order, the confusion would not have arisen. On the other hand, Mr Siraj's list had referred to a S/No. 54(c). Although Mr Siraj sought to explain why he referred to the document as S/No. 54(c), it seemed to me that he too had made a mistake in doing so. In any event, whether he too had made a mistake or not, I was of the view that there was no wilful conduct on the part of Mr Ong or Mr Ng in failing to point out the error initially or in failing to make S/No. 54 available for inspection on 22 August 2007.

20 Paragraph 7 of Mr Ng's affidavit stated that he also still did not know which 14 of the documents sent to Mr Siraj were not the correct ones. There were other allegations in Mr Ng's affidavit of which I will come to later.

21 On 28 November 2007, Mr Siraj filed yet another (a third) affidavit (the "28 November 2007 affidavit") in respect of the alleged failure to make proper discovery as required under AR Lee's order.

22 In the 28 November 2007 affidavit, Mr Siraj complained that:

(a) Mr Ng was not in his office throughout the duration of 10am to 4pm and Mr Ng did not attend to Mr Siraj and his wife personally when Mr Ng was in; and

(b) Mr Ng had left his office before 6pm which was the period of time during which inspection was allowed under AR Lee's order.

23 Although Mr Siraj had mentioned in para 18 of his earlier 30 August 2007 affidavit that Mr Ng was not in his office throughout 10am to 4pm of 22 August 2007, Mr Siraj was not complaining about this as such. Indeed in para 10 of the 1 November 2007 affidavit, he was content to say instead that Mr Ng was present at his office during the period of inspection. It was only in the 28 November 2007 affidavit that Mr Siraj complained that Mr Ng was not present throughout the period of 10am to 4pm of 22 August 2007. Likewise, although Mr Siraj had earlier mentioned that Mr Ng had left the office after 4pm, Mr Siraj had only complained about this in his affidavit of 18 November 2007. It seemed to me that Mr Siraj was making these points because Mr Ng had said, in his other allegations which I mentioned above, that he thought he was being generous by allowing Mr Siraj and his wife to remain in his office (beyond 4pm) when they had already exceeded the six hours specified in an earlier letter and the Notice to Inspect from his firm which provided for inspection up to 4pm.

24 Mr Siraj then took issue with Mr Ng's allegation that he (Mr Ng) had been more than generous with the time for inspection because AR Lee's order had allowed inspection from 10am to 6pm and not to 4pm. Mr Siraj alleged that Mr Ng's allegation was indicative of his disrespect for and contempt of the court.

25 It transpired that Mr Ng had made a second mistake. He elaborated that his previous correspondence and a Notice to Inspect had allowed inspection up to 4pm. He was not the counsel who attended before AR Lee (that was Mr Ong, see [19]). Apparently Mr Ong had since left Mr Ng's firm. Mr Ng himself was unaware that AR Lee's order had allowed inspection up to 6pm. Clearly, the error was on Mr Ng's part. However, I accepted that this was a genuine error and not an attempt by him to be difficult with Mr Siraj. Mr Ng had already allowed Mr Siraj (and his wife) six hours (up to 4pm) to inspect. There was no reason for Mr Ng to try and deliberately cut down the time for inspection, which Mr Ng did not do in any event since he had allowed Mr Siraj to stay on after 4pm. This error, even when taken together with the other error about the document S/No. 54, certainly did not amount to wilful conduct or to justify the primary reliefs which Mr Siraj was seeking. I would, however, digress to say that Mr Ng should have learned to be more careful, especially since past dealings between him and Mr Siraj in respect of Mr Ting's action should have alerted him that Mr Siraj was not a person to be trifled with.

26 In any event, the crux of Mr Siraj's application was that there had been a deliberate failure to make proper discovery. In so far as Mr Siraj was alleging that Mr Ng was not in his office throughout from 10am to 4pm or that Mr Ng had let his office before 6pm, these allegations were not the crux of his application and were also irrelevant since Mr Ng was not required to be in the office throughout 10am to 6pm under AR Lee's order.

27 In so far as Mr Siraj said that Mr Ng did not attend to him personally, that was also not the crux of his application. In any event, AR Lee's order did not require personal attendance by Mr Ng whereas AR Chung's later order required Mr Ting's counsel to be personally present for a subsequent inspection.

28 I would add that Mr Siraj also complained that although a subpoena had been issued for Mr Ng's secretary to attend court to be cross-examined on the missing documents, Mr Ng had asked his secretary not to attend. Mr Siraj was using this incident to support his allegation of wilful conduct against Mr Ng, although the incident was also not the crux of his application. Mr Ng explained that the first hearing of Summons No 4906 of 2007 was on a normal summons day and he was objecting to cross-examination since no leave to cross-examine had been obtained. In any event he did tell his secretary to be on stand-by. Eventually, the court was prepared to allow cross-examination, but because of time constraints, the summons was adjourned to 10 December 2007 and his secretary did turn up then. In the circumstances, I was of the view that this incident did not support Mr Siraj's allegation of wilful conduct.

29 Coming back to the crux of Mr Siraj's application, I agreed with Mr Ng that it was not clear from Mr Siraj's affidavits what other documents he was complaining about.

30 In so far as missing documents were concerned, Mr Siraj's letter of 22 August 2007 and the 30 August 2007 affidavit had only mentioned S/No. 54 specifically. The 1 November 2007 affidavit had also mentioned only S/No. 54 specifically. There was a list of documents annexed to this affidavit but this was a list of documents he had purchased because he wanted copies to be supplied to him. It was not a list of missing documents as such. By the time of the 28 November 2007 affidavit, there was yet another list annexed entitled "List of Substituted and/or Missing Documents" with a column indicating which documents was missing; Mr Ng, however, said that some of those missing documents in that list were not even documents which were the subject of AR Lee's order.

31 Consequently, when parties attended before AR Chung, a shorter list was produced by Mr Siraj and eventually AR Chung made an order for production and inspection of eight documents. Apparently, S/No. 54 was no longer an issue by then. Mr Ng's submission on the eight documents was as follows:

- (a) one document (S/No. 186) was already given to Mr Siraj by Mr Ting's solicitor's letter dated 28 Aug 2007 and exhibited by Mr Siraj at the court hearing on 10 Dec 2007 as "Purchase Lot Bundle B";
- (b) one document (S/No. 191) was already exhibited in the third defendant's affidavit filed on 10 Jul 2007 at page 229 thereof;
- (c) four documents (S/Nos. 228, 251, 252 and 279) were not even requested in Mr Siraj's 3rd Notice; and
- (d) the last remaining two correspondence (S/Nos. 85 and 86) had already been inspected by Mr Siraj but it was Mr Siraj's word against the word of Mr Ting's counsel.

32 It was not suggested by Mr Siraj that there was a failure to comply with AR Chung's order or that he had since discovered the materiality of any of the eight documents or S/No. 54 which in turn would suggest a deliberate omission on the part of Mr Ting or his counsel. I would add that Mr Ting is not a party to the dispute between THL and Mr Siraj and his wife. Aside from the extension of time to issue his award, Mr Ting was only claiming outstanding fees said to be due to him. In the

circumstances, it was clear to me that while there had been mistakes on the part of Mr Ting's counsel, they did not come close to constituting wilful conduct in so far as missing documents were concerned. In so far as the substitution of documents purchased was concerned, that allegation seemed to have died down. The allegation about the confusing description of documents was also not the crux of his application and in any event did not disclose wilful conduct on the part of Mr Ting or his counsel.

33 In my view Mr Siraj knew that there was no conduct on the part of Mr Ting or his counsel that would justify the primary reliefs he was seeking. Yet he made his application in the vain hope of getting Mr Ting's action dismissed and for an order of committal. I was of the view that it was he who was being difficult and not the other side. I am reinforced in this view by his refusal to tell Mr Ng what documents were missing and saying he would rather complain to the court when they spoke over the telephone after 4pm on 22 August 2007 (see [17]). Also, Mr Siraj failed to list out, at the earliest opportunity, the various missing documents he was alluding to, except for S/No. 54.

34 Although Mr Siraj's application had sought alternative reliefs for production and inspection, he was not satisfied with such reliefs as were granted by AR Chung and instead appealed for the primary reliefs. In the circumstances, I dismissed his appeal and awarded costs against him. I can only hope that he (and his wife) will focus on whatever substantive issues there may be as between Mr Ting and them.

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