Hing Yip Containers Pte Ltd v Union Containers Private Limited
[2000] SGHC 106

Case Number : Suit 1538/1999, RA 600019/2000

Decision Date : 07 June 2000

Tribunal/Court : High Court

Coram : Lee Seiu Kin JC

Counsel Name(s) : Lee Mun Hooi & Ng Choon Seng (Lee Mun Hooi & Co) for the plaintiffs; Zaheer K Merchant & Winston Seow Hang Chiang (Madhavan Partnership) for the defendants

Parties : Hing Yip Containers Pte Ltd — Union Containers Private Limited

JUDGMENT:

GROUNDS OF DECISION

1. This is an appeal against the order of the learned Senior Assistant Registrar dated 7 January 2000 giving summary judgment against the defendants in the sum of $296,709.41 plus interest, and awarding costs of $6,000. The defendants appealed against this order. By the time the hearing of the appeal came up before me, the defendants had paid the judgment sum to the plaintiffs. On 6 April 2000, after hearing counsel for the parties, I allowed the appeal in part and ordered that there be conditional leave to defend in respect of Debit Notes No. 221, 222 and 224 totalling $144,200. I dismissed the appeal in respect of the balance $152,509.41. I varied the order for costs below as follows:

> (a) costs to plaintiffs at 50% of costs incurred to date, inclusive of costs below; and
>
> (b) the balance 50% costs incurred to date to be costs in the cause.

2. On 3 May 2000 the defendants filed notice of appeal against my order and I now give my grounds of decision.

Background

3. The plaintiffs' claim against the defendants is for the sum of $296,709.41 (plus interest and costs), which sum constitutes the balance payable for materials supplied, work done and services rendered by them to the defendants. The breakdown of the claim is as follows:

Item	Amount
(a) 17 invoices between 8 Jun & 31 Aug 1999	$224,557.02
(b) Debit Notes:	
No.221 dated 30 June 1999 for $56,650	
No.222 dated 31 July 1999 for $56,650	
No.223 dated 31 August 1999 for $30,900	
	$144,200.00

	$368,757.02
Total:	
(c) Less set-off and payments made	$ 72,047.61
	$296,709.41
Amount claimed	

I shall refer to the $224,557.02 billed under the 17 invoices as the "Invoiced Sum" and the $144,200 billed under the 3 Debit Notes as the "DN Sum".

4. The defendants filed 2 affidavits in opposition to the application for summary judgment, one by Ho Yeung Tai ("Ho") their Finance Manager and the other by Laurentina Low ("Low") their accountant. Ho gave evidence of the background of the plaintiffs and defendants and the nature of the transactions between them. He said that the plaintiffs' managing director, Choi Kwai Shing was also the managing director of the defendants from 1994 until he was removed in June 1999. Ho said that the defendants were manufacturers of cartons and paper products. The defendants sub-contracted to the plaintiffs certain processing works in respect of their carton manufacturing operations. In addition, in times of peak demand, the defendants sub-contracted additional works to the plaintiffs.

5. In respect of the Invoiced Sum, Ho did not claim that the material and work the subject of the invoices were not supplied or done. Instead he took pains to point out that during Choi Kwai Shing's tenure as managing director, Choi Kwai Shing had improperly diverted work to the plaintiffs and taken various loans from them. Choi Kwai Shing had also caused the defendants to remit substantial sums of money to China in relation to an alleged investment there. Ho also questioned the transactions in relation to the DN Sum. He pointed out certain features of the debit notes, to which I shall turn later, which show that they were sham transactions.

6. However there was no allegation that the invoices were not valid, apart from a complaint that the plaintiffs had "overcharged" the defendants. To show this, the defendants exhibited a tabulation of prices of material sold by the plaintiffs to the defendants. The defendants alleged that in the case of 7 out of some 80 items, the plaintiffs had sold them the material at a price higher than the defendants' selling price. However there was no attempt to link the items indicated on this list to the invoices exhibited by the plaintiffs.

7. In her affidavit, the accountant, Low, also described how Choi Kwai Shing gave her instructions to make out a loan of $100,000 to the plaintiffs in May 1996 which she complied with. She then said that Choi Kwai Shing had, on 4 occasions between May 1996 and February 1997, instructed her to "loan monies" to the plaintiffs. However she did not reveal the amounts. She then said that she was subsequently instructed by Choi Kwai Shing to remit the monies directly to China instead of remitting them to the plaintiffs. Low also raised the same doubts about the debit notes that Ho did. But she did not say anything about the 17 invoices.

8. In their affidavits, Ho and Low did not even deny that the Invoiced Sum was due. All they did was to attempt to raise doubts about certain transactions that Choi Kwai Shing was involved in. Yet they did not give much detail as to the wrongfulness of those transactions. Furthermore, Ho said that the defendants would be filing a counterclaim in which these matter would be particularised. But up to the time of the hearing of the appeal before me this was not done. If there had been a bona fide counterclaim, the court could have given consideration to a stay of execution of the judgment pending determination of the counterclaim. Clearly those events were brought up simply to cast

doubts about the plaintiffs and their case, and about Choi Kwai Shing.

9. Choi Kwai Shing filed a second affidavit in reply to the affidavits of Ho and Low. In it he set out the circumstances behind the parties. The plaintiffs and defendants are related companies. They have a common shareholder in Hallam Investments Ltd ("Hallam"), a company registered in the Isle of Man. Hallam owns 41.67% of the plaintiffs' shares and 86.67% of the defendants'. Choi Kwai Shing was a director of both the plaintiffs and the defendants, along with one Hugo Choi and Winfred Lien ("Lien"), until he was removed as a director of the defendants in June 1999 due to "shareholders' politics". He said that the parties had a sub-contracting relationship since 1984, one that the defendants had derived much benefit from. Choi Kwai Shing said that this arrangement was in existence even before he became the managing director of the defendants. For many years, Lien was the director signing the purchase orders issued by the defendants to the plaintiffs. In fact, after Choi Kwai Shing was removed as a director in June 1999, the defendants continued to sub-contract work to the plaintiffs by issuing purchasing orders from July to December 1999. Lien had signed these purchase orders. The defendants had made a part payment in respect of the purchase orders on 18 August 1999 in the sum of $65,935.22. This sum was set off against the amount owing under the invoices. Of the 17 invoices, 2 were issued before Choi Kwai Shing was removed as director, for the sum of about $13,000. The remaining 15 invoices were issued after Choi Kwai Shing was removed. These total about $210,000.

10. Choi Kwai Shing denied the defendants' allegation of overcharging. He said that the prices charged were maintained over the years and the defendants had hitherto paid the earlier invoices without any fuss. He pointed out that after he was removed as a director of the defendants, they continued to sub-contract work to the plaintiffs between July and December 1999 by issuing purchase orders. Choi Kwai Shing said that if the plaintiffs had indeed been overcharging the defendants they would not have continued to issue those purchase orders. In the appeal before me the defendants, who were given leave to file further affidavits, filed one deposed by Hugo Choi. He explained that the defendants had no choice but to sub-contract to the plaintiffs the works in those purchase orders. This was because they needed time to find other sub-contractors to take over from the plaintiffs and approval of their customers to do so. As soon as they found one, the defendants in fact terminated all business with the plaintiffs.

11. As for the debit notes, Choi Kwai Shing said that for many years the defendants had been using the plaintiffs' warehouse for storage of goods. The parties had agreed that the plaintiffs would charge the defendants for this service from April 1995. The plaintiffs had also incurred labour charges for moving the defendants' goods in the warehouse. Such charges were reported in the defendants' annual reports in 1996 and 1998. These reports show that for the period 1 April 1995 to 31 March 1996, the defendants paid the plaintiffs $600,000 in storage charges. In the period 1 April 1997 to 31 March 1998, $650,000 was paid. These reports were signed by Hugo Choi, Lien and Choi Kwai Shing as directors. Choi Kwai Shing said that payments for these charges were made by the defendants since 1996 without protest.

12. In respect of the loans, Choi Kwai Shing said that these were properly authorised by the defendants' board of directors. I note that the defendants had not alleged in the affidavits of Ho and Low that these loans were outstanding nor that they were entitled to set them off against the sums claimed by the plaintiffs. In fact Ho said that these loans were due and repayable by the plaintiffs "upon an account and inquiry being taken and settled in due course". Therefore, even accepting the defendants' position that there were these loans to the plaintiffs, their stand is that they were not yet due.

The Invoiced Sum

13. The defendants do not deny that, in respect of the Invoiced Sum, materials were supplied, the work was done and the services were rendered. Hugo Choi had in effect deposed that they had consciously made the decision to continue to sub-contract work to the plaintiffs after Choi Kwai Shing had been removed as director. They did so notwithstanding their knowledge of all the alleged abuse by Choi Kwai Shing as director. The fact that they had no choice because of commercial pressure does not absolve them of their contractual obligation. The rates charged were the same rates that had been charged all along, which the defendants had not protested about at the time of the invoices. Having given orders for these works to be carried out, and having obtained the benefit of the plaintiffs' efforts, I cannot see how the defendants can now say that they are not liable to pay the Invoiced Sum. As there is no conceivable defence, I dismissed the defendants' appeal against judgment in respect of this part of the claim.

The DN Sum

14. I turn now to the DN Sum which totals $144,200. The defendants say that the debit notes were issued under rather spurious circumstances. They also say that there is duplicity in the debit notes. Hugo Choi pointed out that the 3 debit notes in question state that each is for "service charge, storage & supply of ink for printing of cartons". He said that some of the invoices also provide for printing. I find that this ground raises a triable issue as to whether there is duplicity in the charges given the relationship between the parties. However I am of the view that the defence is shadowy for the following reasons:

> (a) There was a long-standing arrangement in relation to the charges the subject of the debit notes.
>
> (b) Hugo Choi, who made allegations against the plaintiffs, was part of the management team of the defendants when Choi Kwai Shing held control.
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> (c) The defendants had initially relied principally on the affidavit Ho, who had no direct knowledge of the matters. Hugo Choi filed an affidavit only after the plaintiffs had obtained judgment in the court below.

15. I therefore considered that the appropriate order to make in respect of the DN Sum was to give conditional leave to defend. As the defendants had already paid to the plaintiffs the total amount of the judgment given in the court below, I ordered the plaintiffs to refund $144,200 to the defendants upon their providing a banker's guarantee or some other satisfactory security for that amount.

LEE SEIU KIN

JUDICIAL COMMISSIONER

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