IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1995] SGHC 288

Suit 1870/1991

Between

P.T. Arjuna Maha Sentosa

… Plaintiff

And

Lip Guan Industries Pte Ltd

… Defendant

GROUNDS OF DECISION

Version No 1: 29 Oct 2026 (23:45 hrs)

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P.T. Arjuna Maha Sentosa v Lip Guan Industries Pte Ltd

[1995] SGHC 288

Suit 1870/1991
Christopher Lau JC
30 November 1995

1 **Judgment:**

2 **GROUNDS OF DECISION**

3 This is an appeal by the plaintiffs against my decision dismissing with costs which I fixed at S$1,000.00 the plaintiffs' application in Summons-in-Chambers No. 7016 of 1995 filed on 6 November 1995 for the following orders :

4 1. that the judgment entered against the plaintiffs on 3 November 1995 as a result of the plaintiffs' failure to comply with an earlier order dated 2 October 1995 (the earlier order) made by me in the same action be set aside;

5 2. that the plaintiffs be granted an extension of time of a further two (2) weeks from the date of this Order to furnish to the defendants costs of S$20,907.94 by way of a bankers' guarantee; and

6 3. for the costs of this application to be costs in the cause.

7 This was an action commenced by the plaintiffs against the defendants for, inter alia, breach of contract by the defendants in the installation and commissioning of a used laminating machine as a result of which the plaintiffs alleged they had suffered damages.

8 The action came on before me for hearing on 29 May 1995 and after five days of hearing (the May hearing), was adjourned for further hearing to between 2 to 13 October 1995 (the October hearing).

9 At the May hearing, counsel who appeared for the plaintiffs were Mr David Rasif and Mr Alagappan of the firm of M/s Thomas Tham & Co. On 2nd October 1995, Mr Thomas Tham and Mr Alagappan appeared before me in Chambers and applied to vacate the October hearing on the grounds that :-

10 i) Mr David Rasif who appeared as leading counsel for the plaintiffs had tendered his resignation five days earlier, on 27 September 1995, at short notice to his firm;

11 ii) Mr Thomas Tham had been specially requested by the plaintiffs to personally conduct the case but that as he, Mr Tham, was unfamiliar with the case, could not do so at such short notice;

12 iii) the plaintiffs had, following a misunderstanding between M/s Thomas Tham & Co (the plaintiffs' solicitors) and the Registry, already been informed by the plaintiffs' solicitors that these further hearing dates in October 1995 had been vacated and the plaintiffs' managing director in the circumstances had already left Singapore.

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13 This application was strongly opposed by Mr Tan Kok Quan who appeared for the defendants not the least because the plaintiffs had, he said, given every indication since the May hearing, that they intended to proceed with the hearing on 2 October 1995. The application to vacate therefore came as a total surprise to him. Mr Tan further pointed out the fact that the plaintiffs' solicitors' letter of 29 September 1995 (two days after Mr Rasif's resignation and one working day before the hearing on 2 October 1995) to the High Court Registry seeking to vacate the October hearing, stated as the reason for the application to vacate the great financial difficulties of the plaintiffs which resulted in the plaintiffs' inability to pay the S$25,000.00 hearing fees for the October hearing rather than any of the above grounds. In applying to me however to vacate the hearing, the financial difficulties the plaintiffs were allegedly in were not relied on by the plaintiffs' solicitors. Mr Tan pointedly referred to this as clear evidence of the plaintiffs' lack of bona fides in making the application to vacate.

14 In the event, I allowed the plaintiffs' application to vacate the October hearing and made insofar as they are relevant, the following orders :

15 a) that the plaintiffs furnish further security for the defendants' costs to the defendants in the sum of S$50,000.00;

16 b) the costs thrown away by the adjournment be taxed and upon taxation, for the sum allowed on taxation together with the further security ordered of S$50,000.00 to be secured by a bank guarantee to be furnished by the plaintiffs to the defendants by 2 November 1995; and

17 c) in the event of default by the plaintiffs in inter alia, furnishing security within this time frame, the plaintiffs' action be dismissed.

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18 Under these court orders (the earlier orders), the plaintiffs were to furnish the bank guarantee for the further amount of S$50,000.00 and for the costs thrown away as taxed (the defendants' taxed costs) to the defendants by no later than 2 November 1995. The plaintiffs thereafter duly paid the hearing fees of S$25,000.00 on 27 October 1995 and on 2nd November 1995 furnished the bank guarantee for S$50,000.00 to the defendants. However they failed to furnish the bank guarantee for the defendants' taxed costs within time. On 3 November 1995, the defendants therefore entered judgment and the plaintiffs' action was dismissed.

19 Two affidavits were filed by the plaintiffs in support of their application to set aside this judgment and to extend time. Both were filed by Mr Johan Ismail, an assistant solicitor in the firm of M/s Thomas Tham & Co who said he now had conduct of the matter in place of Mr Rasif. Mr Clement Seah, the defendants' general manager filed an affidavit in reply. The reasons given by the plaintiffs in their affidavits for not complying with the earlier order to furnish the defendants with a bank guarantee for the defendants' taxed costs amounting to some S$20,407.94 were that :

20 a) the plaintiffs' solicitors only received a draft of the terms of the banker's guarantee from the defendants' solicitors on 4 October 1995 for the sum of S$50,000.00 but not for the amount of costs thrown away; the reason being that the defendants' Bill of Costs No. 1209 of 1995 for the costs thrown away was only taxed on 10 October 1995;

21 b) subsequently the plaintiffs' solicitors only received a fresh draft of the terms of the banker's guarantee for the sum of S$50,000.00 and for the sum of S$20,407.94 as costs thrown away from the defendants' solicitors on 18 October 1995. By this time, sixteen days had lapsed since the earlier order;

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22 c) on 24 October 1995, the defendants' solicitors then agreed at the plaintiffs' request to have two banker's guarantees, one for the sum of S$50,000.00 and the other for the sum of S$20,407.94 representing the defendants' taxed costs. With that agreement the plaintiffs' solicitors say they had to forward the draft of the terms of the banker's guarantee for the defendants' taxed costs to the defendants' solicitors for their approval and the defendants' solicitors' approval, the plaintiffs concede, was received by them on 25 October 1995 with amendments to the draft;

23 d) on the next day (26 October 1995), the plaintiffs' solicitors asked for a two-week extension to furnish the guarantees. No reasons were given for the request. On the same day the defendants' solicitors informed the plaintiffs' solicitors that no extension of time would be granted;

24 e) it was only on 30 October 1995 that the plaintiffs' solicitors received a copy of the Registrar's certificate on the defendants' taxed costs;

25 f) it was only on 3 November 1995 that the plaintiffs' solicitors received a fax from Chung Khiaw Bank Limited (the Bank) enclosing the Bank's amendments to the draft of the banker's guarantee for the costs thrown away.

26 Mr Ismail, who appeared for the plaintiffs on this application, then referred me to The English Supreme Court Practice 1996; Order 3 Rule 5(2) of the Rules of the Supreme Court and Order 92 Rule 4 of these Rules as well as Marley Estates Ltd v Benedek < 1941 > 1 AER 248, Sanmels v Linzi Dresses Ltd < 1980 > 1 AER C.A. as authority for his submission that the Court has a discretion to extend time and should in the circumstances of this case even though the application to extend time is not made until after time has expired. He further submitted that the plaintiffs' failure to comply with the earlier orders

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was not intentional and contumacious and referred to Re Jokai Tea Holding Ltd < 1993 > 1 AER 630. The plaintiffs' application to extend time was filed on 6 November 1995, four days after the expiry of the time prescribed by the earlier order.

27 These grounds however did not, as Mr Tan pointed out, address the nub of the problem which was : when was the Bank first asked to provide the guarantee and what really was the cause of the Bank's late provision of the guarantee.

28 Mr Tan readily conceded that the court has a discretion to extend time notwithstanding that judgment had been entered. But he submitted that it was incumbent on the plaintiffs to show that there are good and valid reasons for the extension. His submission was that no good and valid reasons had been shown by the plaintiffs and that the plaintiffs' application having regard also to the events that led to the earlier orders being made was clearly not made in good faith. I accepted Mr Tan's submissions. The reasons are :

29 1) As early as 4 October 1995, the defendants had sent to the plaintiffs' solicitors their draft of the terms of banker's guarantee for the sum of S$50,000.00 and for the costs thrown away. There was no response by the plaintiffs to this draft until 18 October 1995 and no explanation was advanced by the plaintiffs for the plaintiffs' failure to respond to this draft until 18 October 1995.

30 2) In any event by 24 October 1995, there was an agreement in place for the plaintiffs' solicitors to furnish two banker's guarantees one for S$50,000.00 and the other for the defendants' taxed costs. This was nine days before the expiry of the time provided under the earlier orders for the provision of the

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guarantees. On the same date, the plaintiffs were given the defendants' draft of the terms of the banker's guarantee for S$50,000.00 by the defendants' solicitors. That was followed on 25 October 1995, which was eight days before the expiry of the time stipulated in the earlier orders, by the plaintiffs' solicitors' receipt of the defendants' draft banker's guarantee for the defendants' taxed costs. So the plaintiffs knew the terms of the guarantees by 25 October 1995. If they thought therefore they required time to obtain the requisite guarantees, they ought to have, before 2 November 1995, applied to Court for an extension. They did not. All they did was to write to the defendants' solicitors on 26 October 1995 seeking a time extension without giving any reasons. Understandably in those circumstances, the defendants' solicitors did not agree. They also took the opportunity to remind the plaintiffs' solicitors that time was running and that if the guarantees were not furnished by 2 November 1995, the plaintiffs' action would be dismissed under the terms of the earlier order.

31 3. The plaintiffs never explained what transpired between the plaintiffs' solicitors and the bank between 25 October 1995 and 2 November 1995. More importantly, no evidence was adduced by the plaintiffs as to when the bank was first asked to furnish the guarantee and why there was this delay by the bank in furnishing the guarantee. In this day and age, banks do not require lengthy periods to provide guarantees. The plaintiffs could easily have provided these explanations but chose not to.

32 When a court makes an order, that must, in the absence of good and valid reasons, be complied with. It was for these reasons the application was dismissed.

33 Dated the 25th day of June 1996.

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34 CHRISTOPHER LAU JC

35 Solicitors :M/s Thomas Tham & Co.
M/s Lee & Lee

Christopher Lau JC

Johan Ismail for the plaintiffs
Tan Kok Quan and Audrey Thng for the defendants