IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 226

OM No 4 of 1997

Between

Brosco International Pte Ltd

… *Plaintiff*

And

Furniture & Household Square Ltd (A Foreign Company)

… *Defendant*

GROUNDS OF DECISION

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Brosco International Pte Ltd v Furniture & Household Square Ltd (A Foreign Company)

[1997] SGHC 226

OM No 4 of 1997
G P Selvam J
30 August 1997

Judgment:

GROUNDS OF DECISION

1. This application by the defendants in High Court Suit No 1553 of 1995 by way of an Originating Motion in the Court of Appeal was (i) to set aside an order of court dated 7 March 1997 on an interlocutory notice of motion No 48 of 1997 in High Court Suit no 1553 of 1995 (ii) for extension of time for service of notice of appeal No 19 of 1997 filed by the defendants in Suit No 1553 of 1995 on 6 February 1997 (iii) alternatively for leave to appeal against the judgment of Rajendran J in Suit no 1553 of 1997 on 9 January 1997. I dismissed the application and the defendants have appealed against my decision. The reasons for the dismissal are as follows:

2. It will be observed that it was a hybridised application and there were a number of procedural flaws in the application and this appeal. The notice of originating motion was headed "In the Court of Appeal of the Republic of

Singapore" and not the High Court and a separate file was opened for it under the heading of "The High Court in Singapore.

3. The notice of appeal in Civil Appeal No 19 of 1997 was not served on the plaintiffs/respondents' solicitors as required by the Rules of Court that is at the time of filing the notice of appeal. The respondents took objections to this and followed it up by an application "In the Supreme Court" to set aside the notice of appeal. The motion was heard by me on 7 March 1997. Counsel for the defendants/appellants were not present for the hearing. I was therefore constrained to make an order setting aside the notice of motion.

4. Then came the present application by an Originating Motion. One of the prayers was to set aside the order I made setting aside the notice of motion. The jurisdiction of the Court of Appeal is purely appellate. It has no original jurisdiction : See s 292 of the Supreme Court of Judicature Act. Originating proceeding by notice of motion therefore was inappropriate. The application should have been made in the proceeding in which the order was made by way of interlocutory motion or in the appeal. It did not come as part of the High Court file in Suit No 1553 of 1995. Next, for the same reason the application for leave to appeal should have been taken out in the appeal file and not by a separate originating motion.

5. Apart from the above, the appeal arose in unusual circumstances. The defendants' counsel made an application for adjournment of the trial. The trial judge refused to grant the adjournment. The counsel then walked out of the proceedings. The judge then went ahead with the hearing effectively ex parte. He did not have the benefit of the professional guidance of the defendants' counsel. The defendants were dissatisfied with the decision. There should

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therefore have been an appeal against the refusal of the application for adjournment or an application to set aside the judgment under O 35 r 2 of the Rules of Court which provides that a judgment given when one party does not appear at the trial may be set aside. It would be an abuse of process for a party or his counsel not to appear at the trial without good reason and then appeal against the decision without giving any assistance to the judge.

6. In view of all the above I directed counsel to clean up the mess and correct the procedural flaws and take out the proper application before the proper forum and adjourned the application for one week for further consideration. My direction was not complied with and counsel insisted on going on with all the procedural defects. I therefore dismissed the application.

G P SELVAM

JUDGE

Solicitors: Vivin Ng & Co

Harry Elias & Partners

G P Selvam J

Ng Hui Bing for the appellants/defendants
Savliwala Din for the plaintiffs/respondents

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