Excel Golf Pte Ltd v Allied Domecq Spirits & Wine (Singapore) Ltd [2003] SGHC 255

Case Number : Suit 286/2003, RA 178/2003

Decision Date : 21 October 2003

Tribunal/Court : High Court

Coram : S Rajendran J

Counsel Name(s) : S H Almenoar and Raji Ramason (Tan Rajah & Cheah) for the appellants; Ang Cheng Hock (Allen & Gledhill) for the respondents

Parties : Excel Golf Pte Ltd — Allied Domecq Spirits & Wine (Singapore) Ltd

Contract – Remedies – Apology – Whether party in breach of contract can be ordered to make public apology – Whether remedy sought available under the law – Whether court has power under para 14 of the First Schedule, Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) to order remedy of public apology

1 The appellants/plaintiffs, Excel Golf Pte Ltd ("Excel") were a Singapore incorporated company and were the organisers of the Annual European Seniors PGA Tour ("EST"), a golfing event comprising three professional golf tournaments to be held in the years 2002, 2003 and 2004 under an agreement with PGA European Tours. The first of these events was in Singapore.

2 The respondents/defendants, Allied Domecq Spirits & Wine (Singapore) Ltd ("Domecq Singapore") were in the wine business in the Asia Pacific region and were the agents of Allied Domecq plc ("Domecq UK"), a public listed company in the United Kingdom. Domecq UK were, inter alia, distributors of the Scotch Whisky known as "Ballantines".

3 Excel claimed that it had entered into an agreement – partly oral, partly in writing and partly by conduct – with Domecq Singapore whereby for a period of 3 years Excel would organise, manage and stage golf tournaments involving golfers of the EST to be called "Ballantines Legends of Golf" in return for certain financial contributions to be made by Domecq Singapore.

4 It was Excel's case that after the agreement had been entered into and after Excel had publicly committed itself to the organising of the said tournament, Domecq Singapore reneged on the agreement causing financial loss to Excel as well as serious harm to the credibility and reputation of Excel and its principal officers.

5 In the proceedings that Excel brought against Domecq Singapore for the alleged breach of contract, Excel sought, inter alia, damages for the harm to their credibility and reputation and amongst the remedies that Excel sought (vide prayer 10 of the Statement of Claim) was an order that Domecq Singapore publish the explanation and apology set out in para 25 of the Statement of Claim. Para 25 of the Statement of Claim read as follows:

> The Plaintiffs further say that in all the circumstances an explanation and an apology (in terms to be approved by this Honourable Court) by way of a full page publication in the Straits Times (Singapore) newspaper, and half page publication in the International Herald Tribune, the Economist, Times Magazine, Newsweek, the New Straits Times (Malaysia), the South China Morning Post (Hong Kong), the Telegraph and Sun (United Kingdom), USA Today (USA), the Australian (Australia), the Asian Wall Street Journal, Sunday News (New Zealand) and the Sunday Times (South Africa) and other leading world publications in the world would go some way to help reduce the damage caused by the Defendants wrongdoings upon the Plaintiffs as aforementioned.

Domecq Singapore took out an application, which was heard by an Asst Registrar, that para 25 and prayer 10 of the Statement of Claim be struck out on the grounds that they disclosed no reasonable cause of action. The Asst Registrar granted this application. Excel, dissatisfied with that decision, filed Notice of Appeal.

6 At the hearing of the appeal Mr S H Almenoar argued on behalf of Excel that the conduct of Domecq Singapore had gravely harmed the reputation of Excel world-wide and that the best way to ameliorate that harm was to get Domecq Singapore to publish the apology sought. Listening to the submissions of Mr Almenoar and accepting – for the purposes of this appeal – that there had in fact been a breach of contract by Domecq Singapore of the nature alleged by Excel, I could appreciate why Excel was demanding that Domecq Singapore make a public apology. However, empathy with a party's predicament is not, by itself, a sufficient basis to rule in that party's favour. The remedy sought by the party must be a remedy available under the law. The issue I had to consider in this appeal was: Does the law enable the court – in an action for breach of contract – to require the party in breach of the contract to make a public apology for the breach?

7 Courts do not have this power even in actions for defamation. As stated in *Gatley on Libel and Slander* (9th Ed), para 9.1:

> There is no general power for the court to order the defendant to publish a correction or apology …

All that a court can do, in a defamation action where the defamation has been established, is to take the lack of an apology into account in assessing the damages payable. Mr Ang Cheng Hock, who appeared for Domecq Singapore, submitted that, a fortiori, the court cannot order a defendant in a breach of contract case to publish an apology.

8 Mr Almenoar was not able to cite to me any direct authority in support of his proposition that a court, in such cases, has the power to order that an apology be published. He relied mainly on the powers of the court as set out in the First Schedule to the Supreme Court of Judicature Act, para 14, of which provides under the heading "Reliefs and remedies":

> Power to grant all reliefs and remedies at law and in equity, including damages in addition to, or in substitution for, an injunction or specific performance.

From the fact that para 14 gave the court power "to grant all reliefs and remedies …" and did not specifically bar the court from ordering that an apology be published, Mr Almenoar argued that the court had powers to order Domecq Singapore to publish the apology sought.

9 I was not able to accept Mr Almenoar's argument. The power that the court had under para 14 was the power to grant all reliefs and remedies at law and in equity. It would therefore have to be established that the court in law or in equity had the power, in a breach of contract case, to order an apology. Mr Almenoar was not able to cite any authority to support that proposition.

10 In the circumstances, I was of the view that the Asst Registrar was correct in striking out para 25 and prayer 10 of the Statement of Claim and, accordingly, I dismissed this appeal with costs.

Appeal dismissed with costs.

Copyright © Government of Singapore.