

Tan Seow Cheng v Oversea-Chinese Banking Corp Ltd
[2003] SGHC 30

Case Number : Suit 1121/2002, RA 282/2002
Decision Date : 21 February 2003
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Vijay Kumar Rai (V K Rai & Partners) for the Plaintiff; Kannan Ramesh and Shalita Jayakumar (Tan Kok Quan Partnership) for the Defendant
Parties : Tan Seow Cheng — Oversea-Chinese Banking Corp Ltd

Civil Procedure – Pleadings – Further and better particulars – Action in respect of remarks made – Whether Statement of Claim must specify identity of maker and time of remarks – Whether entitled to merely state to the best of plaintiff's knowledge.

1. In this action, the Plaintiff Tan Seow Cheng was a customer of Oversea-Chinese Banking Corporation Limited ('OCBC'). He alleged that OCBC had made certain remarks to one Cheong Lam Keong, who was also its customer, to the effect that:

'...[Tan Seow Cheng] has closed one account [with OCBC] and [his] remaining account [with OCBC] has only three hundred over dollars. Since his OCBC account has only a few hundred dollars, you had better mark his UOB cheque.'

2. It was alleged that these remarks were in breach of OCBC's agreement with Mr Tan and/or its statutory duty to Mr Tan and or defamatory.

3. As OCBC is a corporate entity, the alleged remarks could only have been made by one of its staff. However, without obtaining or managing to obtain the identity of the staff in OCBC who allegedly made the remarks, and other particulars, Mr Tan commenced action against OCBC. OCBC then sought various particulars of the Statement of Claim which were ordered by AR Teo Hsiao-Huey with an order that the Statement of Claim be struck out without further order should Mr Tan default in complying with the order.

4. Being dissatisfied, Mr Tan appealed to the judge-in-chambers and the appeal was heard by me. By then, some particulars had been filed. However, as the particulars supplied in respect of some of the paragraphs of the Statement of Claim were not adequate, Mr Vijay Kumar Rai, Counsel for Mr Tan, carried on with the appeal in respect of those paragraphs i.e para 8(a) to (d) and 9. Except for one variation, I dismissed the appeal. Mr Tan has appealed to the Court of Appeal.

The particulars still in issue

5. As I have said, the particulars which were still in issue were in respect of paras 8(a) to (d) and 9

of the Statement of Claim. I set out below the request in respect of these paragraphs and the particulars given:

'Request

Under paragraph 8(a) of the Statement of Claim:-

Of the allegation that "The Defendant disclosed to a third party ... the state of the Plaintiff's account and/or transactions relating to the Plaintiff and/or information relating to the Plaintiff which was obtained from the Plaintiff's account ...":-

(a) state whether the alleged disclosure was made orally or in writing;

(b) if in writing, identify the document;

(c) if made orally, state the name/s of the person/s who made the alleged disclosure, the date/s on which the alleged disclosure was made and the place/s at which the alleged disclosure was made.

Answer (Paragraph 8(a) of the Statement of Claim)

(a) To the best of the Plaintiff's knowledge at present, the disclosure was made orally.

(c) The Plaintiff is unable at present to give particulars of the name(s) of the person(s) who had made the disclosure and the place(s) at which the disclosure was made, save that the disclosure was made on Wednesday 31st October 2001 by official(s) of the Private Banking Department of the Defendant to Cheong Lam Keong, shortly before or after or during, lunch with the Defendant's representatives at the OCBC Centre at Chulia Street.

Request

Under paragraph 8(b) of the Statement of Claim:-

Of the allegation that "The Defendant failed to maintain secrecy of information obtained from the Plaintiff's account or sources other than the Plaintiff's account", please give full particulars of how the Defendant allegedly failed to maintain secrecy of information.

Answer (Paragraph 8(b) of the Statement of Claim)

Refer to Paragraph 8(a) of the Statement of Claim and to the further and better particulars thereof.

Request

Under paragraph 8(c) of the Statement of Claim:-

Of the allegation that "the Defendant failed to seek sufficiently or not at all the consent of the Plaintiff for disclosing the Plaintiff's information to third persons":-

(a) state the information which was allegedly disclosed;

(b) state whether the alleged disclosure was made orally or in writing;

(c) if in writing, identify the documents;

(d) if disclosed orally, state the names of all the third persons to whom the information was allegedly disclosed, the name/s of the person/s who made the alleged disclosure, the date/s on which the alleged disclosure was made and the place/s at which the alleged disclosure was made.

Answer (Paragraph 8(c) of the Statement of Claim)

Refer to Paragraph 8(a) and to the further and better particulars thereof.

Request

Under paragraph 8(d) of the Statement of Claim:-

Of the allegation that "The Defendant failed to observe the statutory duty imposed by Section 47(1) and 47(5) of the Banking Act Cap 19", please give full particulars of how the Defendant allegedly failed to observe the statutory duty.

Answer (Paragraph 8(d) of the Statement of Claim)

Refer to Paragraphs 8(a), 8(b) and 8(c) of the Statement of Claim and to the respective further and better particulars thereof.

Request

Under paragraph 9 of the Statement of Claim:-

Of the allegation that "... the Defendant, acting through its employees, agents and/or servants spoke the following words or words to that effect which were defamatory of the Plaintiff in the

way of his said office and/or calling to Cheong", please state:-

(a) the number of occasions on which that (*sic*) the alleged words were spoken;

(b) the dates and times of each occasion;

(c) the names of the persons who spoke the alleged words on each occasion;

(d) the place at which the alleged words were allegedly spoken to Cheong.

Answer (Paragraph 9 of the Statement of Claim)

(a) The Plaintiff is unable at present to state the total number of occasions on which the words were spoken, save that the words were spoken on at least one occasion which is cited in Paragraph 8(a) of the Statement of Claim and the further and better particulars thereof.

(b) The Plaintiff is unable at present to state the dates and times of each occasion, save that one of the occasions, was on Wednesday 31st October 2001 as per the further and better particulars to Paragraph 8(a) of the Statement of Claim.

(c) The Plaintiff is unable at present to state the name(s) of the person(s) who spoke the words on each occasion save as per the further and better particulars to Paragraph 8(a) of the Statement of Claim.

(d) The Plaintiff is unable at present to state the place(s) at which the words were allegedly spoken to Cheong Lam Keong, save that the words were spoken on Wednesday 31st October 2001 as per the further and better particulars to Paragraph 8(a) of the Statement of Claim.'

Arguments and my decision

6. Mr Kannan Ramesh, Counsel for OCBC, submitted that in relation to para 9 of the Statement of Claim, Mr Tan must provide the name of the staff who allegedly made the remarks and the place or places and the dates and times the same were made. He accepted that one date i.e 31 October 2001 had been provided. In relation to para 8 of the Statement of Claim, he submitted that Mr Tan must provide the name of the staff who allegedly made the remarks. If the particulars sought were not provided, OCBC could not sensibly prepare for trial.

7. Mr Rai countered that OCBC must know which officer in the relevant department dealt with Mr Cheong. OCBC must also know what policies or guidelines it had about disclosing information about one customer to another. He said that Mr Tan had difficulty in getting further information from Mr

Cheong but accepted that there was no affidavit from Mr Tan about this difficulty. There was also a suggestion by Mr Rai that when the matter proceeded to trial, Mr Cheong would be subpoenaed and the information sought would be given by him. As for the dates and places, Mr Rai submitted that Mr Tan should be allowed to provide such particulars to the best of his knowledge. Mr Rai then sought to extend this argument to the name of the person who allegedly made the remarks.

8. In my view, the most critical fact that must be asserted in the Statement of Claim was the name of the staff who allegedly made the remarks. I did not accept the submission that because OCBC must know which officer in the relevant department dealt with Mr Cheong, Mr Tan need not identify the staff. It was not for OCBC to make its own inquiry but for Mr Tan, as the Plaintiff, to assert the identity of the maker of the remarks. Furthermore, OCBC should not have to wait until trial to learn about this identity as it required the identity in order to prepare for the trial. I also did not accept the submission that Mr Tan should be allowed to state the identity of the staff to the best of his knowledge. It seemed to me that this was a ploy for him to identify any one staff and then be allowed subsequently to allege that in fact it was another staff who allegedly made the remarks.

9. Likewise, for the dates and times when the alleged remarks were made. These were material facts. Mr Tan had to make it clear whether he was asserting that the remarks were made on only one occasion i.e 31 October 2001 or more and identify them by dates and times. If he was not certain about the exact dates and times, he could give approximates. As for the place where the alleged remarks were made, I allowed Mr Tan a variation, i.e he could assert the place to the best of his knowledge since this was less material and at the time of the hearing before me, I was not certain whether Mr Cheong knew the place where the alleged remarks were made as I was not certain whether they had been made over the telephone.

10. It seemed to me that Mr Tan was ill-prepared to mount his claim. He could and should have first obtained the necessary particulars from Mr Cheong. If Mr Cheong was not prepared to co-operate, he could and should have obtained the particulars through O 26A of the Rules of Court regarding pre-action interrogatories. If Mr Tan was concerned about antagonising Mr Cheong, then Mr Tan should re-consider whether to pursue his claim. Instead, Mr Tan initiated his action in the hope of muddling along till he reached the trial stage. However, OCBC was not obliged to go with him along this unsatisfactory route. Furthermore, when faced with OCBC's request for particulars, Mr Tan could and should have immediately taken steps under O 26A or withdraw his claim till he was better prepared. However, he did not take either step.

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