Ung Yoke Hooi v Attorney-General
[2008] SGHC 139

Case Number : OS 1415/2007

Decision Date : 21 August 2008

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Singa Retnam and Amaladass (Kertar & Co) for the applicant; Eric Chin and Stanley Kok (Attorney-General's Chambers) for the respondent

Parties : Ung Yoke Hooi — Attorney-General

Administrative Law

21 August 2008

Tay Yong Kwang J:

1 This is an application under O 53 of the Rules of Court (Cap. 322 R5, 2006 Rev Ed) ("ROC") for leave to apply for the following orders:

(a) A declaratory order, directing the Attorney-General, the Director of Corrupt Practices Investigation Bureau ("CPIB") and Principal Special Investigator Alvin Cheong to release Standard Chartered Bank Accounts No. 22-3-xxxxxx-x, 22-0-xxxxxx-x, 015-xxxxx-xx-xx and 015-xxxxx-xx-xx and Development Bank of Singapore ("DBS") Account No. 11-7-xxxxxx;

(b) A declaratory order that the withholding of the Applicant's monies in the said five bank accounts pursuant to s 68 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") and the failure to report to a magistrate for directions on the disposal of the monies under s 392 of the CPC, is an abuse of power and/or neglect of duty;

(c) In the alternative, a declaratory order that the failure of the persons mentioned in (a) above to avail themselves of Sections 16 and 17 of the Corruption, Drug Trafficking and other Serious Crime (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed) ("CDSA") is clear evidence that their mere reliance on s 68 of the CPC is another aspect of an abuse of power and/or process;

(d) A mandatory order to direct the Attorney-General to forthwith release the accounts and render the same operable by the Applicant.

2 At this stage, it would be appropriate and convenient for me to deal quickly with prayers (a) to (c) set out above.

3 It is well-established that the High Court does not have the power to grant declaratory orders under Order 53 of the ROC. Our O 53 is borrowed from the old English O 53, in force prior to 11 January 1978, which never contained a power to grant declaratory orders. England has since changed its position through legislative amendments. Sinnathuray J held in *Re Application by Dow Jones (Asia) Inc.* [1987] S.L.R. 505 (at [225]) that:

The position in Singapore is different from that of England … there is no provision in our

substantive law or our rules of court relating to procedure for this court to make orders of declarations or give other ancillary reliefs in an application made under O 53.

This position was approved in *Chan Hiang Leng Colin and Others v Minister for Information and the Arts* [1996] 1 S.L.R. 609 ("*Colin Chan*") where the Court of Appeal held (at [613]):

> Our RSC O 53 is based on the old English O 53. There was never any power to grant a declaration under that Order because a declaration is not a prerogative order. *Re Application by Dow Jones (Asia) Inc* was rightly decided.

4 The applicant has not sought to show how the above legal principle can or should be departed from in the present case. Therefore, following *Colin Chan*, I must strike out the application in respect of the three declaratory orders. Accordingly, the rest of this judgment deals only with the application to seek leave to apply for the mandatory order.

The applicant's case

5 The applicant, a Malaysian citizen now residing in Singapore with his family, is a businessman who deals with waste metals. He has the following bank accounts:

(a) Standard Chartered Bank Account No. 22-3-xxxxxx-x ("Account No. 1");

(b) Standard Chartered Bank Account No. 22-0-xxxxxx-x ("Account No. 2");

(c) Standard Chartered Bank Account No. 015-xxxxxx-xx-xx ("Account No. 3");

(d) Standard Chartered Bank Account No. 015-xxxxx-xx-xx ("Account No. 4"); and

(e) Development Bank of Singapore Account No. 11-7-xxxxxx ("Account No. 5").

6 The genesis of this case began in 2002 when, at the behest of one Raymond Ng, the applicant purchased 29% of the shares in Citiraya Technologies Sdn Bhd ("Citiraya Malaysia"). Raymond Ng and the applicant were then, respectively, the Chief Executive Officer and a minority shareholder of Citiraya Malaysia's parent company, Citiraya Industries (Singapore) Ltd ("Citiraya Singapore"). Citiraya Singapore owned 60% of Citiraya Malaysia, while another two minority shareholders owned 8% and 3% respectively.

7 Subsequently, Raymond Ng sold his shares in Citiraya Singapore to his brother, one Ng Teck Lee. Sometime in 2003, Ng Teck Lee offered to purchase all the remaining shares in Citiraya Malaysia not owned by Citiraya Singapore. The two minority shareholders of Citiraya Malaysia instructed the applicant to act for them in this matter through a letter of authority. After negotiations effectively concluded in December 2003, the applicant agreed to sell his shares plus the shares of the minority shareholders, totalling 40% of Citiraya Malaysia's shares, to Ng Teck Lee for S$4 million. The applicant took pains to emphasize that the negotiations were concluded at arm's length.

8 Under the terms of this agreement, the S$4 million was to be paid in 10 equal instalments. The applicant states that the first instalment was paid on 19 April 2004 by way of an OCBC cheque drawn in the name of one Goh Teck Inn. It was never made clear who this Goh Teck Inn was and what his relationship with Ng Teck Lee was. Another 5 instalments were subsequently paid on 27 May 2004, 27 July 2004, 27 October 2004, 30 November 2004 and 30 December 2004. These were paid by the transfer of monies from bank accounts in the name of Pan Asset International ("PAI"), a company

incorporated in the British Virgin Islands, to the applicant's Account No. 2. As will be seen, it is the respondent's case that PAI was beneficially owned by Ng Teck Lee.

9 In January 2005, CPIB's investigations against the management of Cititraya Singapore, for a scam involving the diversion of rejected microprocessor chips into black markets, were made public. By November 2005, various individuals were convicted of abetting Ng Teck Lee in bribery and falsifying accounts or for accepting bribes. Ng Teck Lee left Singapore and became a fugitive.

10 In December 2006, the applicant found that he was unable to operate Account No. 1. Shortly after that, he was notified by the Development Bank of Singapore that Account No. 5 was frozen by the CPIB. The applicant then sought an explanation from the CPIB. By a letter dated 13 June 2007, the CPIB confirmed that Accounts No. 1 and 5 had been frozen pursuant to section 68 of the CPC. This is incorrect as it was later discovered, during a pre-trial conference, that Account No. 1 was never frozen by the CPIB. It is unclear why the applicant was unable to operate it in December 2006.

11 By a letter dated 4 February 2008, the CPIB informed the applicant that Accounts No. 2 and 3were also seized in addition to Account No. 5. Thus, only 3 bank accounts were seized by the CPIB: Accounts No. 2, 3 and 5. Nonetheless, the applicant insisted that not only was Account No. 1 also frozen but Account No. 4, which had not been mentioned before the applicant filed his amended originating summons, had also been seized. Thus, in the amended originating summons, the applicant made all 5 accounts the subject of his application.

12 The applicant seeks a mandatory order to direct the respondent to release the 5 accounts. While the applicant made a number of assertions, his basic legal claims may be summarized as follows:

(a) The seizure of the bank accounts under s 68 of the CPC was illegal and an abuse of process. This is because, first, the applicant had not been charged with any offence nor was he the subject of any investigation; second, the respondent had not provided any evidence that the funds in the seized accounts came from PAI; and third, the applicant had no knowledge that the funds came from PAI; Moreover, CPIB's intention to proceed with confiscation orders under the CDSA was also an abuse of process;

(b) The seizure of the accounts was unreasonable as CPIB had done nothing with the accounts since the first one was seized more than a year ago;

(c) There was also procedural impropriety in the seizure of the accounts. The applicant claimed that the procedure set out in s 68(2) and 392(1) of the CPC were not complied with.

The respondent's case

13 The respondent submitted that since January 2005, Ng Teck Lee has been under investigation for criminal breach of trust for misappropriating computer chips from Citiraya Singapore. In the midst of the investigations, it was discovered that the proceeds of sale from the misappropriation ("Misappropriation Proceeds") were paid into the bank accounts of PAI, a company owned beneficially by Ng Teck Lee.

14 The respondent submitted that the five instalments paid by Ng Teck Lee to the applicant from 27 May 2004 to 30 December 2004 (see [8] above) were made out of PAI bank accounts and paid into the applicant's Account No. 2. Thus, part of the Misappropriation Proceeds could be traced directly to the applicant's Account No. 2. This account was accordingly seized on 17 November 2006.

15 However, prior to the seizure of Account No. 2, some of the Misappropriated Proceeds had already been transferred to Accounts No. 3, 4 and 5 from Account No. 2. As such, Account No. 3 was seized on 19 December 2006 while Account No. 5 was seized on 11 January 2007. For some reason, perhaps due to oversight, Account No. 4 was not seized. This account was an investment account and it was redeemed on 5 July 2007. The funds from the redemption were credited back to Account No. 2. Therefore, in order to rectify the earlier lapse, the CPIB seized the funds that were in Account No. 2 on 7 March 2008, after this originating summons had been commenced. At all times, the CPIB asserted that the source of monies in the accounts seized was connected to the Misappropriation Proceeds.

16 The respondent further submitted that the length of time for which the accounts had been seized was reasonable since the case was complex and involved, among other things, foreign financial institutions and foreign companies. The case was further complicated by Ng Teck Lee's absence from Singapore. In the circumstances, there was no inordinate delay to justify the issue of a prerogative writ (see *Tan Tiang Hin Jerry v Singapore Medical Council* [2000] 2 S.L.R. 274 ("*Jerry Tan*").

17 The respondent also argued that the seizure of the accounts would not last indefinitely. The CPIB intends to commence criminal proceedings against Ng Teck Lee when he is located and brought back to Singapore. In the meantime, in the absence of Ng Teck Lee, the CPIB has been making preparations to proceed with confiscation orders under the CDSA. All three accounts seized by the CPIB will be the subject of such confiscation proceedings.

18 In any case, the respondent submitted, the applicant had not suffered any substantial prejudice from the seizure of the accounts: see *Jerry Tan* at [49]. The respondent argued that the applicant had only made a bare assertion of hardship and had not bothered or was unable to provide any credible evidence as to the alleged hardship. In fact, there was some evidence indicating that the applicant did not have a pressing need for the monies held in the accounts seized. This could be seen from the fact that the applicant was unclear about or even unaware of which of his accounts were seized. According to the respondent, as the applicant is an astute businessman, his lack of knowledge about which of his bank accounts were subject to seizure must lead to the irresistible conclusion that the applicant did not have any pressing need for the monies in the seized accounts.

The decision of the court

19 I refused the applicant leave to apply for a mandatory order. Order 53 r 1(1) of the ROC states that:

> No application for a Mandatory Order, Prohibiting Order or Quashing Order shall be made unless leave to make such an application has been granted in accordance with this Rule.

The orders referred to in the above rule were formerly known as mandamus, prohibition and *certiorari* respectively (see Appendix D of the ROC).

20 In *Public Service Commission v Lai Swee Lin Linda* [2001] 1 S.L.R. 644 ("*Linda Lai*"), the Court of Appeal explained (at [653]) that the application for leave:

> … is intended to be a means of filtering out groundless or hopeless cases at an early stage, and its aim is to prevent a wasteful use of judicial time, protect public bodies from harassment (whether intentional or otherwise) that might arise from a need to delay implementing decisions where the legality of such decisions is being challenged.

21 The balance of justice is struck by allowing leave "… if there appears to be a point which might, on further consideration, turn out to be an arguable case in favour of granting to the applicant the relief claimed" (see *Linda Lai* at [653]). Another way of expressing the same test would be to require the applicant to show "… a *prima facie* case of reasonable suspicion" (see *Colin Chan* at [616]). In coming to this conclusion, however, the court should not go into the matter in any depth but rather make "… a quick perusal of the material then available" (see *IRC v National Federation of Self-Employed* [1981] 2 All ER 93 (at [p 106]).

22 As conceded by the respondent, the threshold that the applicant has to satisfy is a low one. However, this should not be taken to imply that the applicant will succeed whenever a bare allegation of maladministration is made. This same point was emphasized in *Teng Fuh Holdings Pte Ltd v Collector of Land Revenue* [2006] 3 S.L.R. 507 (at [524]) ("*Teng Fuh Holdings*") when Phang J (as he then was) said:

> … such abuse of power will not be assumed (let alone be found) at the slightest drop of a hat. It is a serious allegation. There must be proof. In proceedings such as these, there must be sufficient evidence, produced in its appropriate context, that establishes that a "*prima facie* case of reasonable suspicion" of bad faith exists.

23 Thus, at the very least, the applicant has to establish what might turn out to be an arguable case. Anything beneath that standard will not do. In my view, the applicant has not even satisfied this minimum standard of proof. He has not shown sufficient evidence to prove that there might be an arguable case that the seizure of his accounts was in any way illegal or unreasonable or that there was procedural impropriety. Indeed, this case appears to me to be the type of case that O 53 r 1 of the ROC is meant to filter out.

Illegality

24 The applicant argued that the seizure of the bank accounts under s 68 of the CPC was illegal and an abuse of process. This was based on three contentions:

(a) The applicant had not been charged with any offence nor was he the subject of any investigation;

(b) The respondent had not provided any evidence that the funds in the seized accounts came from PAI; and

(c) The applicant had no knowledge that the funds came from PAI.

Furthermore, it was said that the CPIB's decision to eventually take out proceedings under s 16 of the CDSA would also amount to an abuse of process.

25 Since much of the arguments turned on s 68 of the CPC, I now reproduce the provision in full below:

> **Powers of police to seize property suspected to be stolen.**
>
> **68.** —(1) Any police officer may seize any property which is alleged or suspected to have been stolen or which is found under circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

It is immediately apparent, on plain reading of the section, that nothing in it requires the applicant to be charged with any offence, be the subject of any investigation or to have knowledge that the property was stolen. On the contrary, all that is required is that the property is alleged or suspected to be stolen or that it is found under circumstances which create suspicion of the commission of an offence. Thus, the fact that the applicant may have had no knowledge of any offence committed by Ng Teck Lee is irrelevant. The applicant's claim of illegality on the grounds (a) and (c) of [24] above therefore cannot stand.

26 It is incorrect for the applicant to argue that the respondent did not provide evidence that the monies in the seized accounts came from PAI. This would reverse the burden of proof as it is incumbent upon the applicant, not the respondent (as there might not even be any since an application under O 53 for leave is usually heard *ex parte*), to provide the grounds for which the relief is sought. O 53 r 1(2) provides as follows:

(2) An application for such leave must be made by ex parte originating summons and must be supported by a statement setting out the name and description of the applicant, the relief sought and the grounds on which it is sought, and by an affidavit, to be filed when the application is made, verifying the facts relied on.

Thus, it is the duty of the person applying for leave under O 53 to provide sufficient evidence to show that there might be an arguable case to grant the relief sought. In this particular case, the import of O 53 r 1(2) means that the applicant has to show evidence that the funds in the seized accounts were not tainted by the Misappropriation Proceeds. He could perhaps have done this by showing that the monies in the said accounts originated from a "clean" source.

27 It is true that the applicant did say that the first instalment, for the sale of the applicant's Citiraya Malaysia shares to Ng Teck Lee, was made by way of an OCBC bank cheque in the name of one Goh Teck Inn. However, he failed to explain who this Goh Teck Inn was and whether he had any connection to Ng Teck Lee. More glaringly, the applicant then neglected to explain how the rest of the instalments were paid. It was the respondent who came to court to explain that the rest of the instalments were made via bank transfers from PAI bank accounts. Hence, the applicant did not provide sufficient evidence to show that there was no link between the monies in his accounts and Ng Teck Lee.

28 At this point, it is appropriate for me to echo Phang J's statement in *Teng Fuh Holdings* (quoted at [22], above) that an abuse of process is a serious allegation for which requisite evidence must be provided before the court will grant leave under O 53. In the circumstances, the applicant's suggestion that there was an abuse of process because the respondent did not provide evidence that the funds in the seized accounts came from PAI is without merit.

29 I also rejected the applicant's submission that the CPIB's intention to eventually take out confiscation proceedings under s 16 of the CDSA will also amount to an abuse of process. First, this is an allegation that, if proved to be true, would be more suitably remedied by the grant of a prohibiting order, not a mandatory order. Even disregarding this technicality, there is nothing illegal for the CPIB to take out confiscation proceedings after using s 68 of the CPC to seize the accounts. S 68 of the CPC is an interim measure used to preserve evidence while investigations are underway. This is evident from s 392(1) of the CPC which mandates that the seized property must be reported to a Magistrate's Court which may then make a final order regarding the property. Given that s 68 of the

CPC is merely a temporary measure, the CPIB is fully entitled to take steps to confiscate the monies in the accounts after the accounts have been seized.

30 The applicant also argued that using the CDSA now would amount to an abuse of process because s 15 of the CDSA requires that the owner of the property subject to restrain must either have criminal proceedings instituted against him or have been officially informed that he may be prosecuted for a serious offence. No proceedings have yet been commenced against the applicant nor has he been informed that he may be prosecuted for any offence. That may be true but since the CPIB has yet to confiscate or restrain the seized accounts under the CDSA, no such alleged abuse of process has taken place.

Unreasonableness

31 It was also alleged that the seizure of the accounts was unreasonable as the CPIB had done nothing with the accounts since the first account was seized on 17 November 2006, more than a year ago. On this point, the respondent submitted that the test for whether the length of time for which the accounts were seized was reasonable is found in the case of Tan Tiang Hin Jerry v Singapore Medical Council [2000] 2 S.L.R. 274 ("Jerry Tan"). It was submitted that the test consisted of 2 stages. First, it must be determined whether there has been an inordinate delay in the handling of the accounts; and second, the delay must have caused substantial prejudice to the applicant.

32 The case of Jerry Tan involved a delay in dealing with a complaint by the Complaints Committee of the Singapore Medical Council. In the present case, it is not even true that there was any delay or that the CPIB has done nothing with the accounts after they were seized. In his oral submissions, counsel for the respondent informed the court that the three seized accounts were reported to the Magistrate, as required by s 392 of the CPC, on 8 March 2007. Thus, the accounts were held, not at the discretion of the CPIB, but by the order of the Magistrate. The relevant section is reproduced, as follows:

> **Procedure by police on seizure of property.**
>
> **392.** —(1) The seizure by any police officer of property taken under section 29 or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence shall be forthwith reported to a Magistrate's Court which shall make such order as it thinks fit respecting the delivery of the property to the person entitled to the possession of it or, if that person cannot be ascertained, respecting the custody and production of the property.
>
> (2) If the person so entitled is known, the Magistrate's Court may order the property to be delivered to him on such conditions, if any, as the Magistrate's Court thinks fit.
>
> (3) The Magistrate's Court shall, on making an order under subsection (2), cause a notice to be served on that person, informing him of the terms of the order, and requiring him to take delivery of the property within such period from the date of the service of the notice (not being less than 48 hours) as the Magistrate's Court may in the notice prescribe.
>
> (4) If that person is unknown or cannot be found the Magistrate's Court may direct that it be detained in police custody and the Commissioner of Police shall, in that case, issue a public notification, specifying the articles of which the property consists and requiring any person who has a claim to it to appear before him and establish his claim within 6 months from the date of the public notification:

> Provided that, where it is shown to the satisfaction of the Magistrate's Court that the property is of no appreciable value, or that its value is so small as, in the opinion of the Magistrate's Court, to render impracticable the sale, as hereinafter provided, of the property, or as to make its detention in police custody unreasonable in view of the expense or inconvenience that would thereby be involved, the Magistrate's Court may order the property to be destroyed or otherwise disposed of, either on the expiration of such period after the publication of the notification above referred to as it may determine, or forthwith, as it thinks fit.
>
> (5) Every notification under subsection (4) shall be published in the *Gazette* if the value of the property amounts to $100.

The CPIB did report the seizure of the three accounts to the Magistrate's Court. Although it did not appear to have been done "forthwith", there is no apparent prejudice occasioned to anyone. The CPIB has therefore dealt with the seized property appropriately and is now holding the monies in the seized accounts legally, reasonably and with the Magistrate's sanction.

33 The first account was seized on 17 November 2006 and is still frozen now. That is a period of more than a year. This is not unreasonable as the case is a complex cross-border one involving foreign companies, foreign bank accounts and foreign financial institutions. The disappearance of Ng Teck Lee has made things more difficult as this means that the CPIB has to conduct investigations without his assistance. In the circumstances, it could not be said that there was inordinate delay for the accounts to be under seizure for more than a year.

34 I also accepted the respondent's submission that the applicant has not suffered any substantial prejudice due to the seizure of the accounts. It is true that he has made some suggestion of hardship caused to him and his family. However, this was not borne out by the evidence. On the contrary, the evidence suggested that he has no real pressing need for the monies in the seized accounts as he was not even aware of their seizure. He had knowledge of their seizure only after (in the case of Accounts No. 2 and 3) the CPIB and (in the case of Account No. 5) DBS informed him. According to the evidence, the only account he has attempted to use (Account No. 1) was not seized. Therefore no substantial prejudice has been caused to the applicant by the continued seizure of Accounts No. 2, 3 and 5.

35 The applicant's claim that the CPIB was unreasonable in its handling of his accounts was simply untenable.

Procedural Impropriety

36 The final ground relied upon by the applicant to obtain a mandatory order was that there was procedural impropriety in the seizing of the three accounts. The House of Lords decided in *Lloyd v McMahon* [1987] A.C. 625 (at [702-703]) that:

> …it is a well established rule that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness…

Therefore, where Parliament has set out a procedure to be followed, failure to comply with such could be a ground for granting a mandatory order.

37 There are two heads to the applicant's claim of procedural impropriety. He alleged that both

s 68(2) (see [25] above) and s 392(1) (see [32] above) of the CPC were not complied with.

38 In my opinion, the applicant's claim of procedural impropriety is without merit. In respect of s 68(2), the affidavit provided by Principal Special Investigator of the CPIB, Fong Wai Kit ("Fong"), clearly evinced the fact that he ordered the seizure of the accounts and that the seizure was reported to him. Under section 17 of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed), a special investigator may exercise all or any of the powers in relation to police investigations given by the CPC where a seizable offence has been committed. Since the CPIB was investigating an offence of criminal breach of trust, a seizable offence under Schedule 2 of the CPC, Fong would accordingly also be able to exercise his power to seize the accounts or to receive a report of the seizure of the accounts. Section 68(2) of the CPC was therefore complied with.

39 As for s 392(1), counsel for the respondent stated that the CPIB reported the seizure to the Magistrate's Court on 8 March 2007. As stated at [32] above, the slight delay in reporting is immaterial as it caused no apparent prejudice to anyone.

40 For the above reasons, the applicant's claim of procedural impropriety could not be sustained.

Conclusion

41 In summary, the applicant has not adduced sufficient evidence to show that there might be an arguable case that the seizure of the accounts was in some way illegal or unreasonable or that there was procedural impropriety on the part of the investigating authority. The applicant has therefore not satisfied the standard required for granting leave.

42 In the circumstances, I directed, with respect to Accounts No. 1 and 4 that the CPIB said were not seized, the CPIB to write a letter to Standard Chartered Bank, by 4 pm on 14 April 2008, to confirm the same. This letter from the CPIB is to be copied to the solicitors for the applicant. Apart from the above direction, the originating summons is dismissed with costs to be taxed or agreed.

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