

Anwar Siraj and Another v Ting Kang Chung John and Another
[2009] SGHC 129

Case Number : OS 1231/2008, RA 470/2008
Decision Date : 27 May 2009
Tribunal/Court : High Court
Coram : Andrew Ang J
Counsel Name(s) : Appellants/plaintiffs in person; Ng Yuen (Malkin & Maxwell LLP) for the first respondent/defendant; S Thulasidas (Ling Das & Partners) for the second respondent/defendant
Parties : Anwar Siraj; Khoo Cheng Neo Norma — Ting Kang Chung John; Teo Hee Lai Building Construction Pte Ltd

Civil Procedure

27 May 2009

Andrew Ang J:

1 The plaintiffs and the second defendant ("the Contractor") entered into arbitration proceedings over a dispute relating to the construction of the plaintiffs' house at No 2 Siglap Valley by the Contractor. The first defendant ("John Ting") was the arbitrator in the arbitration proceedings and has written an arbitration award ("the Award") which has yet to be collected by either side. By way of this originating summons filed on 24 September 2008, the plaintiffs sought, *inter alia*, to set aside the Award and to refer its disputes with the Contractor to the courts for resolution instead. Subsequently, on 31 October 2008, the plaintiffs filed Summons No 4814 of 2008 with the following prayers:

- 1) pursuant to the Rules of Court Order 4 Rule 1, the matters pending in Originating Summons OS1231/2008/W AND Originating Summons OS1807/2006/S AND Suit 348/2006/M be consolidated on such terms as the Honourable Court thinks just;
- 2) any other directions which the Honourable Court deems fit and just in respect of and/or arising from the consolidation of the aforementioned three pending matters so as to ensure the economic, expeditious, fair and just resolution of all the pending matters;
- 3) pursuant to the Rules of Court Order 28 Rule 8 and Order 5 Rules 2 and 4 the Originating Summons OS1231/2008/W be converted into a Writ of Summons and the proceedings should be continued as if the matter had been begun by Writ;
- 4) any other directions which the Honourable Court deems fit and just in respect of and/or arising from the conversion of OS1231/2008/W into a Writ of Summons including but not limited to the requirements under Order 25 Rules 2 to 7;
- 5) that the Police and/or the Commercial Affairs Dept (CAD) and/or any other appropriate Investigating Authority be directed to:

- a) speedily complete their investigations into Magistrate's Complaint Nos. COM-002184-04 (CM-002943-04), COM-001081-04 (CM002436-04) and MAG-000262-05/C (CM-002282-05) and to furnish their comprehensive report to this Court together with full details of the names, particulars (including NRIC No. and address) and nationality of parties named and/or identified in the report(s) and/or photographs;

- b) speedily investigate
 - i) all allegations of fraud, fraudulent claims and cheating, falsification of bills and/or receipts made against the 1st and 2nd Defendants and/or their agents and/or staff and/or servants;

 - ii) all allegations of criminal negligence due to loss of documents and/or any other evidence caused by and/or resulting from the actions/omission of the 1st Defendant

And to submit their Report urgently and directly to this Honourable Court;

- 6) any other relief and/or remedies as the Honourable Court deems fit and just;

- 7) Costs.

2 In this appeal from the Assistant Registrar's decision disallowing the plaintiffs' application, the plaintiffs (who were unrepresented) and counsel for the defendants appeared before me on 6 March 2009 for the purpose of prayers 1 to 4, 6 and 7 set out in Summons No 4814 of 2008 ([1] above). Prayer 5 had been dealt with by Lee Seiu Kin J in *Anwar Siraj v Ting Kang Chung John* [2009] SGHC 71 where the learned judge declined to make the order prayed for. The parties informed me that prayers 1 and 2 had also been dealt with in Civil Appeal No 172 of 2008 where the Court of Appeal ordered that Originating Summons Nos 1807 of 2006 and 1231 of 2008 ("OS 1231") be consolidated. In light of this development, the plaintiffs no longer sought consolidation of Suit No 348 of 2006. Hence, the primary issue for my consideration raised by prayers 3, 4, 6 and 7 was whether OS 1231 ought to be converted into a writ action and what consequential orders, if any, should be made.

3 Order 28 r 8 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the Rules") which is concerned with the continuation of proceedings as if the cause or matter was begun by writ provides that:

Where, in the case of a cause or matter begun by originating summons, it *appears to the Court* at any stage of the proceedings that the proceedings *should for any reason* be continued as if the cause or matter had been begun by writ, it may order the proceedings to continue as if the cause or matter had been so begun and may, in particular, order that pleadings shall be delivered or that any affidavits shall stand as pleadings with or without liberty to any of the parties to add thereto or to apply for particulars thereof. [emphasis added]

The plaintiffs contend that conversion of the matter to a writ action should be ordered for two reasons:

- (a) The plaintiffs' claim is based on an allegation of fraud; and

(b) There is a substantial dispute of facts of the matters at hand for which affidavits only without cross-examination of witnesses will result in a substantial miscarriage of justice.

4 When asked to elaborate, the first plaintiff referred to his first affidavit filed on 24 September 2008 in which he had alleged (at [33], [52], [54], [72b] and [73] to [79]) that John Ting had tried to charge both the plaintiffs and the Contractor more than was due to him by way of arbitration fees and had raised the fact (at [80] to [88]) that there were three criminal complaints filed against John Ting alleging that he had unlawfully disposed of documents submitted by the parties for the arbitration.

5 I found the plaintiffs' submissions to be untenable. The former allegation did not raise issues of fraud. Both the plaintiffs and the Contractor have never accepted John Ting's quantification of the fees and have refused to pay. This was not a matter of fraud but merely a dispute as to the appropriate amount of fees. With regard to the latter allegation, John Ting's counsel accepted that there were three such criminal complaints. After all, such criminal complaints were a matter of public record and, if the allegation was true, it would have been pointless for John Ting to deny it. In the final analysis, it did not appear to me that there were substantial disputes of fact. In these circumstances, I did not think it necessary for the matter to be converted into a writ action and dismissed the plaintiffs' application.

6 Nevertheless, in light of the first plaintiff's insistence that it was necessary to cross-examine the witnesses, I was prepared under O 28 r 9 of the Rules to allow cross-examination of the witnesses. I limited this to the affidavits (or part thereof) which he thought were absolutely essential for him to cross-examine on and gave him time to consider this. The matter was adjourned but on 20 March 2009, when parties returned, the first plaintiff maintained the position that the matter should have been converted into a writ action. When queried, he confirmed the plaintiffs' intention to appeal. Therefore, it would have been pointless to go through the exercise of identifying the affidavits on which he should be permitted to cross-examine.

7 In the result, I dismissed the plaintiffs' appeal and ordered costs to be fixed at \$1,400 to the first defendant and \$1,300 to the second defendant.

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