

Motorola Solutions Credit Co LLC v Kemal Uzan and others
[2014] SGHC 218

Case Number : Suit No 1046 of 2013 (Summonses Nos 739 of 2014, 2396 of 2014, 2428 of 2014, 3118 of 2014 and 4008 of 2014)
Decision Date : 29 October 2014
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : Derek Tan, Tan Lay Joan (WongPartnership LLP) and George Calhoun (instructing counsel) for the plaintiff; Abraham Vergis, Kimberley Leng and Jaya Anil Kumar (Providence Law Asia LLC) for the 8th, 9th and 10th defendants; Terence Seah and Tan Su Hui (Shook Lin & Bok LLP) for the receivers of the 9th and 10th defendants.
Parties : Motorola Solutions Credit Co LLC — Kemal Uzan and others

Agency – Powers of Attorney – Revocation

29 October 2014

Woo Bih Li J:

Introduction

1 On 14 February 2014, I made an order (“the Receivership Order”) appointing Mr Andrew Grimmett and Mr Tam Chee Chong as receivers (“the Receivers”) over all the assets of the ninth defendant, Haj Capital Pte Limited (“Haj Capital”) and of the tenth defendant, Levant One Investments Pte Limited (“Levant One”).

2 Subsequently, the Receivers filed Summons No 3118 of 2014 on 25 June 2014. The main relief sought by the Receivers was an order that all powers of attorney granted or purported to be granted by Haj Capital and Levant One prior to and/or subsequent to 14 February 2014 be revoked with effect from 14 February 2014. On 31 July 2014, I granted such an order (“the Revocation of P/A Order”).

3 On 5 August 2014, Providence Law Asia LLC (“Providence”), the solicitors for the eighth defendant, Colin Alan Cook (“Cook”), Haj Capital and Levant One wrote in to request for further arguments to be heard by me on the effective date of the Revocation of P/A Order. Cook is a director of Haj Capital and Levant One and these three defendants speak with one voice. I instructed the Registrar of the Supreme Court to reject the request for further arguments.

4 On 14 August 2014, Cook, Haj Capital and Levant One filed Summons No 4008 of 2014 for leave to appeal to the Court of Appeal. The grounds were that there were questions of general importance to decide for the first time and/or questions of importance upon which further argument and a decision of a higher tribunal would be for the public advantage. The questions were:

- (a) whether powers of attorney may be ordered to be revoked retrospectively; and
- (b) whether notice of revocation of the powers of attorney by reason of the appointment of court-appointed receivers over Haj Capital and Levant One should be given by such receivers to

the relevant attorneys (who are not resident in Singapore and who are not exercising their powers in Singapore) before such revocation can be considered effective *vis-à-vis* such attorneys.

5 On 15 September 2014, I granted leave to appeal. I set out below my reasons for the Revocation of P/A Order.

The issues

6 The first issue is whether the Revocation of P/A Order should have been granted to take effect from the date of the Receivership Order or the date when the Revocation of P/A Order was made.

7 The second issue is whether the Receivers must give notice of revocation of appointment of a power of attorney before the revocation is effective *vis-à-vis* the attorney.

Background

8 Suit No 1046 of 2013 ("Suit 1046") was commenced on 18 November 2013 by the plaintiff to enforce certain final and binding judgments ("the Judgments") of the United States District Court for the Southern District of New York and the English High Court of Justice, Queen's Bench Division, Commercial Court.

9 The Judgments were against the first to seventh defendants. However, the plaintiff had named the eighth to eleventh defendants as parties to Suit 1046 on the grounds that:

(a) the eighth to eleventh defendants are the agents and/or nominees of, and hold assets for and on behalf of, the first to seventh defendants; and

(b) such assets ought to be available to satisfy any judgment in Suit 1046 against the first to seventh defendants.

10 As mentioned above, I granted the Receivership Order on 14 February 2014. Thereafter, the Receivers applied on 25 June 2014 to revoke all powers of attorney with effect from 14 February 2014.

11 The Receivers said that they had come to learn about the existence of the powers of attorney and mentioned two reasons relating to the exercise of a power of attorney which caused them concern.

Jordan Decapolis Capital ("JDC")

12 First, they had learned that JDC, a company incorporated under the laws of Jordan, had been placed under the equivalent of insolvent voluntary liquidation. Haj Capital and Levant One own an aggregate of 83.39% of the shares in JDC. These shares are one of the major assets of Haj Capital and Levant One. JDC is an investment company which holds shares in the Jordan Dubai Islamic Bank. The present liquidator was appointed on the advice of Haj Capital and Levant One or their attorneys under a power of attorney. The Receivers wanted to change the liquidator. However, the Receivers' attempt was resisted by one Mohammad Abbas ("Abbas") who alleged that he had a power of attorney from Haj Capital and Levant One and that the Receivership Order was due to be set aside. There have been further developments regarding this liquidation and apparently it is at present under the supervision of the Central Court of Amman, Jordan. Even then, the Receivers wanted to have a

say as to who should be appointed as the liquidator to preserve the assets of Haj Capital and Levant One. I will not elaborate further on the developments as there is some dispute as to whether the Receivers' version of the development is accurate.

Polkaco Holdings Co Limited ("Polkaco")

13 Secondly, the Receivers said that they had learned (apparently after the application for the revocation of the powers of attorney was filed) that ten days after the Receivership Order, Polkaco filed an action in the Amman West Civil District Court in Jordan being Case No 180/2014 against Haj Capital, Levant One and a third company known as AA Capital Investment Ltd. Polkaco is a company incorporated in Cyprus. Its action was to claim repayment of a loan of about US\$75m. Thereafter Polkaco entered into a settlement with all three defendants pursuant to a settlement agreement dated 6 April 2014 ("the SA"). Under the SA the defendants admitted the alleged debt and agreed to transfer their shares in JDC to Polkaco in satisfaction of the debt.

14 The SA was signed by Rawa'a Barbar, a lawyer appointed by Abbas. The lawyer who filed the action on behalf of Polkaco was Imad Sharqawi who was subsequently appointed by Abbas to obstruct an extraordinary general assembly of JDC on 30 June 2014 to replace the first liquidator of JDC. The Receivers say that they are applying for a retrial of Case No 180/2014 on the basis that Abbas did not have authority to bind Haj Capital and Levant One under the SA signed by the lawyer appointed by him in view of the Receivership Order.

15 According to a draft affidavit of Abbas, the three defendants had already signed a deed on 16 November 2012 confirming part of the debt due to Polkaco and the action by Polkaco was due to the failure by these defendants to repay the admitted debt.

16 According to a draft affidavit of Imad Sharqawi, he has no dealings with Abbas and has never acted for Haj Capital or Levant One.

The Court's reasons

17 On 31 July 2014, counsel for various parties appeared before me in respect of three applications:

- (a) Summons No 2396 of 2014 ("Summons 2396");
- (b) Summons No 2428 of 2014 ("Summons 2428"); and
- (c) Summons No 3118 of 2014 ("Summons 3118").

18 Summons 2428 was an application for a stay of the Receivership Order pending the outcome of Summons 2396. Summons 2428 was filed by Cook, Haj Capital and Levant One in the present action. It was withdrawn as these defendants thought that it was no longer necessary since Summons 2396 was already fixed for hearing on the same day.

19 Summons 2396 was an application by Cook, Haj Capital and Levant One essentially to set aside a Mareva Injunction order granted earlier and the Receivership Order. In the course of hearing arguments for Summons 2396 that day, I decided to interpose Summons 3118 because it appeared to me that there was some urgency in that application.

20 Summons 3118 was the application for the Revocation of P/A Order. Cook, Haj Capital and

Levant One did not oppose the application, subject to Summons 2396 which was their application to set aside the Mareva Injunction order and the Receivership Order.

21 As regards the effective date of the Revocation of P/A Order, counsel for Cook, Haj Capital and Levant One, Mr Vergis, suggested that it should be with effect from the date the order was made, *ie*, 31 July 2014. He said that one should generally be reluctant to backdate orders and it may muddy the waters in Jordan if the revocation was to take effect from the date of the Receivership Order. He said he would leave the effective date of the Revocation of P/A Order to the court.

22 After this presentation, Mr Seah, counsel for the Receivers, did not make any substantive oral submission in addition to the written submissions dated 29 July 2014 for the Receivers.

23 Consequently, I granted an order in terms of prayers 1 and 2 of the application which meant that powers of attorney granted by Haj Capital and Levant One were revoked with effect from 14 February 2014.

24 As mentioned above at [3], Providence then served a letter dated 5 August 2014 asking for further arguments on the effective date of the Revocation of P/A Order. This letter was surprising in two respects.

25 First, Mr Vergis had specifically said (on 31 July 2014) that he would leave the effective date to the court to decide, although he had suggested that the effective date should be 31 July 2014 and not 14 February 2014. When a counsel states that he is leaving a matter to the court to decide, he is signalling that he is not taking any formal position even though he may have a preference. In other words, he is not making any submission as such to persuade the court to rule on a dispute. Once such a stance is taken, it is incongruous for counsel to try and persuade the court to vary its decision after the court announces its decision.

26 Providence's letter had omitted to mention the fact that Mr Vergis had said that he would leave the point to the court to decide. Instead, para 3 of Providence's letter alleged that they had "submitted" that the revocation should take effect from the date of the hearing, *ie*, 31 July 2014 but there was no submission as such.

27 Secondly, para 31 of Providence's letter stated that:

In the interest of pressing ahead with the Discharge Application, and in order to dispose of the Application expeditiously on 31 July 2014 given that it was an isolated point, we did not have sufficient time to expound on and engage on the points set out above.

28 I was surprised at this allegation. As stated above, Mr Vergis had said that he would leave the point to the court to decide. At no time did he suggest that he needed more time on the point or ask for more time.

29 In any event, I gave instructions to reject the request for further arguments as I was of the view that there was no substantive merit to the request. I shall elaborate below.

30 One of the further arguments from Providence was that the Receivers themselves had failed to take immediate steps to revoke the powers of attorney.

31 A second argument was that it is far from clear that the Receivership Order results in the automatic revocation of all powers granted under the powers of attorney. Providence argued that the

Receivership Order was only a partial order which allowed the Receivers to take over the management of Haj Capital and Levant One, only in so far as it was "necessary for the identification and preservation" of their assets. That order was made "without prejudice to the authority of the directors or officers of [the entities] to cause [the entities] to take steps in these or other proceedings to resist the Plaintiff's claims or any other steps taken by the Plaintiffs".

32 A third argument was the question of prejudice and liability which Abbas could unjustly suffer as a result of the steps he had taken on behalf of Haj Capital and Levant One. It was said that the first time that he was aware that his power had been revoked was when the Jordanian Companies Controller Department showed him on 30 June 2014 a copy of a letter dated 25 June 2014 from the Receivers revoking his appointment as attorney which Abbas had allegedly not received. Apparently the Receivers had sent letters dated 25 June 2014 to revoke all the powers of attorney before my decision on 31 July 2014.

33 It is common ground that the Receivership Order did not expressly contain any order to revoke the powers of attorney. This was because as at 14 February 2014, the plaintiff was not aware of the existence of the powers of attorney. Had the plaintiff been aware and had it included the revocation of these powers of attorney in the application to appoint the Receivers, I would have had no hesitation in making an order to revoke the powers of attorney. In my view the continuation of the powers of attorney would be inconsistent with the purpose of appointing the Receivers to preserve the assets of Haj Capital and Levant One in the first place. Therefore, as my order of 31 July 2014 was to confirm what I would have done on 14 February 2014, had the specific matter of revocation been raised then, I was of the view that the revocation should be with effect from 14 February 2014. I was also of the view that the Receivers' intention to replace the first liquidator or any other liquidator (as apparently a second liquidator may have been appointed in place of the first) was within the purpose of preserving the assets of Haj Capital and Levant One and was within with the scope of the Receivership Order. This addresses the second argument which is connected with the first issue referred to at [6] above.

34 I come now to Providence's first and third arguments which are connected with the second issue referred to at [7] above.

35 In brief, the first argument by Providence was that the Receivers failed to take immediate steps to revoke the powers of attorney when the Receivers came to learn about the existence of the powers of attorney. The third argument was that Abbas might be unduly prejudiced by an order revoking the powers of attorney as he had already taken some steps before he had notice of the revocation of the powers of attorney.

36 In other words, these two arguments were to the effect that even if I had made an order to revoke all powers of attorney earlier, that order should not be effective until notice of revocation has been given (and received) by the Receivers to the attorneys.

37 I did not agree with that argument as a general principle as it could easily be abused and would encourage mischief.

38 In the first place, a plaintiff may not even know of the existence of powers of attorney in order to seek a specific order of revocation of the same.

39 Secondly, even if a specific order of revocation was sought and obtained as a matter of precaution, the Receivers may not have enough information about the contact details of the attorneys to inform them promptly. For example, if the attorneys have only a post office address in a

foreign country, it may take some time until the notice of revocation reaches them. In the meantime, the directors and attorneys could easily collude for the attorneys to act before the notice is sent or received. As it was, Abbas was already saying (in his draft affidavit) that he did not receive a notice dated 25 June 2014 from the Receivers revoking his appointment.

40 Thirdly, an order appointing receivers of the assets of a company is effective from the date it is given. The effectiveness is not dependent on notice of the order being sent or served to each and every one of the directors of the company. There should not be a different principle for attorneys acting under a power of attorney from the company.

41 What then of an attorney who has taken steps in reliance on a power of attorney before he receives notice of the appointment of receivers or revocation of his appointment? In my view his situation is no different from a director who has also taken steps in reliance on his own office before he receives a similar notice. Likewise for, say, a chief executive officer of the company.

42 In the present case, Abbas or a third party who had entered into an agreement with Abbas or transacted with Abbas before notice would not be without recourse.

43 First, Abbas or the third party should inform the Receivers of the steps taken by Abbas and ask the Receivers to ratify the steps. If the Receivers refuse to do so, then Abbas or the third party may apply to a Singapore court to ratify the steps or to compel the Receivers to do so. If the steps had been taken *bona fide* in the interest of Haj Capital and Levant One, there should be no difficulty in persuading the Receivers or the court to ratify the steps.

44 At present, it was not Abbas or a third party that was seeking a ratification or a variation of the effective date of the Revocation of P/A Order. It was Cook, Haj Capital and Levant One. What *bona fide* interest could they have in doing so?

45 As for the argument that the Receivers had failed to act promptly to notify the attorneys, I was of the view that this did not affect the general principle I mentioned above that the effectiveness of the revocation of a power of attorney is not dependent on the date the notice is sent to or received by the attorney to revoke his appointment. If the Receivers had failed to act promptly and an attorney had acted *bona fide*, that would be one reason to ratify what the attorney had done. It would, however, not be a sufficient reason to adopt the general principle advocated by Providence. Subject to the above, I agree that receivers should act promptly to give such a notice and I would like to say something about the Receivers' apparent inactivity.

46 It was not entirely clear to me in the present case when the Receivers first knew or ought to have known about the existence of the powers of attorney. Mr Grimmett is one of the two of the Receivers. He had executed his first affidavit in the action on 21 May 2014. Paragraph 3.1.5 stated that on 26 February 2014, the Receivers had received various documents from Tay Wee Ling Linda and Ng Hui Yi Cheryl, the company secretaries of Haj Capital and Levant One respectively. Mr Grimmett listed the documents received. Providence was of the view that the powers of attorney were part of the documents listed by Mr Grimmett as their letter requesting further arguments referred to this para 3.1.5 of Mr Grimmett's first affidavit when they complained about the Receivers' inaction. Furthermore, when the Receivers' solicitors, Shook Lin & Bok ("SLB") sent a response on 6 August 2014 to Providence's request for further arguments, SLB did not dispute Providence's reference to Mr Grimmett's first affidavit that the Receivers had received the powers of attorney on 26 February 2014.

47 On the other hand, Mr Grimmett's first affidavit in the action was filed to support a different

application and not the application to revoke the powers of attorney. The first affidavit of Mr Grimmett which was filed to support the specific application to revoke the powers of attorney was his second affidavit filed in the action. He signed this affidavit on 25 June 2014. Paragraphs 3.1.1 to 3.1.3 of his second affidavit disclosed that the Receivers had learned about the powers of attorney from documents made available to the Receivers by Goh Shaozhi Kyron a director of Haj Capital and Levant One (and not from the company secretaries he mentioned in para 3.1.5 of his first affidavit). Also, the descriptions of the powers of attorney in his second affidavit did not appear identical with those listed in his first affidavit. Therefore, it was not clear whether the powers of attorney which he referred to in his second affidavit were also some of the documents he had listed in his first affidavit. Mr Grimmett's second affidavit was also silent as to when the Receivers received the powers of attorney.

48 The lack of clarity as to when and from whom the Receivers received the documents comprising the powers of attorney was disappointing. The Receivers should have carefully and candidly elaborated in an affidavit as to when and from whom they received the relevant documents and when the contents of the powers of attorney came to their attention and why they did not act more quickly to revoke the powers of attorney.

49 Be that as it may, there was no suggestion that the Receivers' omission was deliberate to cause loss or inconvenience to the attorneys or to third parties. On the other hand, it was not disputed that Cook was aware of the Receivership Order when it was made as he was represented by solicitors then. He was also aware of the existence of the powers of attorney. Yet he did not disclose them promptly to the Receivers or notify the attorneys of the Receivership Order. If he was in any genuine doubt about the effect of the Receivership Order, he ought to have consulted his solicitors who also acted for Haj Capital and Levant One. Cook's omission could have been deliberate whereas the same could not be said of the Receivers' omission.

50 In the circumstances, I was also of the view that the revocation of each power of attorney was not dependent on a notice being sent by the Receivers and received by the attorney whether the notice was to inform about the appointment of the Receivers or specifically to revoke the power of attorney.

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