IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC(I) 24

Suit No 3 of 2020 (Summons No 59 of 2020)

Between

(1) Christian Alfred Larpin
(2) Quo Vadis Investments Limited

… *Plaintiffs*

And

(1) Kaikhushru Shiavax Nargolwala
(2) Aparna Nargolwala

… *Defendants*

JUDGMENT

[Civil Procedure] — [Costs] — [Security]

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v
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Roger Giles IJ
6 November 2020

24 November 2020

Roger Giles IJ:

Introduction

1 Through their holding of the shares in Querencia Ltd ("Querencia"), a British Virgin Islands ("BVI") company, the Defendants held rights to Villa 29 in the Andara Resort in Phuket, Thailand ("the Villa"): sufficiently for present purposes, a form of ownership. In late 2017, the Defendants sold the Villa to the First Plaintiff ("Mr Larpin"), by the sale and transfer of the shares in Querencia to his beneficially owned company, the Second Plaintiff, Quo Vadis Investments Limited ("Quo Vadis"). In these proceedings, the Plaintiffs claim orders for rescission of the sale, return of the purchase price of US$7.9m, and damages.

2 This is the Defendants' application for an order that the Plaintiffs provide security for their costs, up to and including closing submissions post-

trial, in the amount of S$350,000, together with the usual ancillary orders. The basis for the application is the "foreign plaintiff" ground in O 23 r 1(1)(a) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (the "Rules"), that the plaintiff is ordinarily resident out of the jurisdiction.

3 For the reasons which follow, the application should be dismissed.

These Proceedings

4 For the submissions in the application, a brief summary of the claim and the defence to it is desirable. The pleadings are quite extensive, and the summary necessarily does not capture their detail.

5 Mr Larpin attended a viewing of the Villa on 25 or 26 October 2017, conducted by the Defendants' selling agent Mr Martin Phillips. He expressed interest, and on 8 November 2017 a Reservation Agreement between Quo Vadis and the Defendants was executed. On 14 November 2017 a Share Purchase Agreement between the same parties was executed. Completion of the Share Purchase Agreement took place on 16 November 2017.

6 The Plaintiffs allege that by executing the Agreements, and orally by a telephone conversation between Mr Larpin and the First Defendant ("Mr Nargolwala") on 15 November 2017, the Defendants made a number of representations concerning the sale of the Villa via the Querencia shares. The representations include that all information which would materially affect the sale of the Villa had been disclosed. The Plaintiffs allege that the representations were false, and that they were made fraudulently or recklessly or, if not, in circumstances attracting relief under the Misrepresentation Act (Cap 390, 1994 Rev Ed). They allege that they relied on the representations in entering into the Agreements and completing the Share Purchase Agreement; that they would not

have entered into the Agreements or purchased the Villa had they known the undisclosed information; and that they were prevented by the representations and by concealment of the undisclosed information from electing not to do so.

7 At the heart of the alleged falsity and nondisclosure are dealings in October 2017 between a Mr Solomon Lew and Mr Daniel Meury of the Andara Resort, in so far as they were communicated by Mr Meury to the Defendants. The dealings culminated in an offer by Mr Lew to purchase the Villa for US$5.25m and, on the Plaintiffs' case, a possible agreement for sale at that price. The Plaintiffs allege that on 14 November 2017 the Defendants were made aware that Mr Lew claimed to have an agreement for the sale of the Villa and threatened legal action to enforce it; but, they say, in the telephone conversation on 15 November 2017 Mr Nargolwala said that the claim was unsustainable. In broad terms, on the Plaintiffs' case the undisclosed information is the dealings between Mr Lew and Mr Meury as known to the Defendants and the details of Mr Lew's claim and threat; and the possible adverse claim to the Villa and the threat of legal action by Mr Lew, and the failure to disclose the information to the Plaintiffs falsified the representations made in the Agreements and orally.

8 For present purposes, it is sufficient that the Defendants deny making any false representations to the Plaintiffs, and in particular that their Defence includes that in the telephone conversation on 15 November 2017 and a subsequent email, Mr Nargolwala told Mr Larpin that although the Defendants considered Mr Lew's claim unsustainable, the Plaintiffs could "abort and unwind the transaction" or wait to see what Mr Lew was going to do, rather than proceed to completion, but Mr Larpin said that he was not concerned and would go ahead and complete.

9 In the Plaintiffs' Reply, it is said that the options given to Mr Larpin were illusory when the Plaintiffs were labouring under the misrepresentations and nondisclosure. In oral submissions, the Plaintiffs said that Mr Larpin would have been able to make a considered and better decision had all material facts been disclosed.

The Lew Proceedings

10 Mr Lew did bring legal action, although not until early 2019. He named as defendants the Defendants, the Plaintiffs and Querencia. He claimed that he had an oral agreement to purchase the Villa, made through Mr Meury (as the Defendants' agent) on 11 October 2017; that the Defendants acted in breach of their duties thereby owed to him in transferring the Querencia shares to Quo Vadis; that the Plaintiffs had actual or constructive knowledge of the oral agreement, whereby Quo Vadis was liable in equity to transfer the shares to him and the Plaintiffs were liable for inducing the Defendants' breach; and that Querencia was liable for dishonestly assisting the Defendants in their breach.

11 Mr Lew's proceedings went to trial over ten days in late 2019 to early 2020. The judgment of Simon Thorley IJ was published on 5 February 2020: see *Lew, Solomon v Kaikhushru Shiavax Nargolwala and others* [2020] 3 SLR 61 ("*Solomon Lew*"). It was held that a binding oral contract had not been entered into, nor were fall-back arguments of ratification and estoppel accepted. It was further held that, on the hypothesis of a concluded oral contract, Mr Larpin did not have the necessary knowledge of it and so no relief would have been granted against the Plaintiffs.

12 Mr Lew has appealed from the decision of Simon Thorley IJ. The appeal is to be heard later this month. At a Case Management Conference ("CMC") in July 2020, counsel for the Plaintiffs foreshadowed that if the appeal was

successful, their claim would be expanded to a claim in unjust enrichment. In this application, however, neither side suggested that my decision should take account of or is affected by the prospect of a successful appeal.

13 The damages claimed by the Plaintiffs in these proceedings are, or include, their costs incurred and to be incurred in the Lew proceedings and some BVI proceedings involving Querencia, so far as not otherwise recovered.

The Amount of Security

14 The Plaintiffs did not question the amount sought by the Defendants. In their Proposed Case Management Plan for the CMC earlier mentioned, they estimated their own costs in prosecuting the proceedings at S$500,000.

Whether security should be ordered

The "foreign plaintiff" ground

15 These proceedings were commenced in the High Court and were subsequently transferred to the Singapore International Commercial Court. No order as envisaged in O 110 r 45(2A) of the Rules was made upon transfer. It was common ground that, as explained in *B2C2 Ltd v Quoine Pte Ltd* [2018] 5 SLR 105 at [28]–[29], in such a case the ground that the plaintiff is ordinarily resident out of the jurisdiction is notionally added to the conditions for ordering security for costs, and that the principles relevant to O 23 r 1(1)(a) of the Rules apply.

16 It was also common ground that the threshold condition of ordinary residence out of the jurisdiction in O 23 r 1(1)(a) was satisfied. Mr Larpin is a Swiss citizen who is resident in Hong Kong. Quo Vadis is a Hong Kong company.

17 The condition for ordering security for costs being satisfied, it is necessary to consider all the circumstances to determine whether it is just that security be ordered, without a presumption in favour of, or against, an order: *Jurong Town Corp v Wishing Star Ltd* [2004] 2 SLR(R) 427 ("*Jurong*") at [14].

The Plaintiffs' Means

18 Mr Larpin said that he is a "person of means". The Defendants said that he is "a very wealthy man who does business in various countries". There was no further detail of his means. Mr Nargolwala said in his first affidavit that so far as he was aware, Mr Larpin does not carry on any business in Singapore or hold any assets in Singapore, and that he had reason to believe that Mr Larpin often held assets through special purpose vehicles (as with Quo Vadis), and that he understood that the shares in Querencia were Quo Vadis' only asset. In his affidavit filed in response, Mr Larpin did not controvert these beliefs. I consider that I can proceed on the basis that, although he is wealthy, Mr Larpin does not have any assets in Singapore, and that the shares in Querencia are Quo Vadis' only asset.

Relative Strengths

19 The relative strengths of the parties' cases is a relevant consideration and may be part of the circumstances which the court will consider in deciding whether to order security for costs. The court, however, will not enter into a detailed consideration of the merits, unless a high probability of success one way or the other can be clearly demonstrated, although matters bearing on the relative strengths can be noted. I refer without repeating it to my summation in *SK Lateral Rubber & Plastic Technologies (Suzhou) Co Ltd v Lateral Solutions Pte Ltd* [2020] 4 SLR 72 at [36].

20 The Defendants submitted that there was a low likelihood of the Plaintiffs succeeding, describing the Plaintiffs' case as one they would have great difficulty in establishing and even as untenable. They said that the alleged misrepresentations were premised on an oral agreement for the sale of the Villa having been concluded as asserted by Mr Lew, but that Simon Thorley IJ had found otherwise in the Lew proceedings (this was said to be directed to the representations by the Agreements). They said that any purported misrepresentations were only the Defendants' opinion and not actionable as misrepresentations of fact (this appears to have been directed towards the 15 November 2017 telephone conversation) and in particular that Mr Larpin's rejection of the Defendants' offer to allow the transaction to be aborted and unwound meant that the Plaintiffs did not rely on any actionable misrepresentation. In their oral submissions, the Defendants invited me to come to an "impressionistic view", without detailed consideration, that the Plaintiffs' claim was weak.

21 For their part, the Plaintiffs submitted that their case was "clearly meritorious" and should carry weight against the ordering of security for costs, but they said that it was not appropriate to go into the merits of the proceedings. In my view, it would not be appropriate. Although I have briefly described the proceedings and the submissions, any consideration of the merits of the claim and the defence (which should be more than impressionistic) is not appropriate in this application. A full and careful analysis and consideration of the facts and law, including the matters above on which the Defendants particularly relied, is necessary, with the benefit of such further exploration as may occur, at trial. I decline to find that one side has a stronger case than the other: the strength of the parties' respective cases is a neutral factor.

Other Factors

22 Apart from the asserted strength of their case, the Defendants submitted that there would be inconvenience, delay and expense in enforcing any costs judgment against the Plaintiffs, as a factor in favour of ordering security.

23 The Defendants submitted that it was necessary to consider enforcement against Mr Larpin and Quo Vadis separately. However, on the issues in the proceedings any order for costs would almost certainly be against the Plaintiffs jointly and severally, and where Mr Larpin is a wealthy and readily available target (see below), I consider that enforcement against Quo Vadis is for practical purposes of little significance.

24 The Defendants recognised that under the Reciprocal Enforcement of Foreign Judgments Act (Cap 265, 2001 Rev Ed) and the Reciprocal Enforcement of Foreign Judgments (Hong Kong Special Administrative Region of the People's Republic of China) Order (S 93/1999), a judgment of the Singapore courts enjoys reciprocity of enforcement in the Hong Kong courts. The Defendants said that they were nonetheless in a less favourable position than if enforcing in the Singapore courts, and were exposed to the risks of foreign procedure. They referred in particular to the observations of Choo Han Teck J in *Pacific Integrated Logistics Pte Ltd v Gorman Vernel International Freight Ltd* [2007] 1 SLR(R) 1017 at [7] where, after referring to realistic alternatives which would make enforcement against a plaintiff's foreign assets comparatively simple, his Honour said:

> At the same time, this is not to say that security will *never* be ordered if foreign enforcement proceedings are a viable option. The purpose behind O 23 r (1)(*a*) is not limited to protecting a defendant in the extreme situation where an order of costs would otherwise be a "paper judgment". On a more nuanced level, it is also aimed at *reducing* the time and expense involved in enforcing such orders. As stated by our Court of Appeal in

> *Ooi Ching Ling Shirley v Just Gems Inc* [2002] 2 SLR(R) 738 at [19], one of the rationales for granting security against a foreign plaintiff is "the *delay or expense* that will arise in enforcing the costs order abroad [emphasis added]" … [emphasis in original]

25 As the Plaintiffs submitted, in the face of this bilateral enforcement regime, the Defendants did not identify any real or particular difficulty in enforcing a Singapore judgment in Hong Kong. A Singapore judgment can be registered and then enforced as a Hong Kong judgment. The Defendants submitted, however, that there was no evidence that Mr Larpin had assets in Hong Kong, and that when he was a world-wide businessman and user of special purpose vehicles, readily able to move assets around, reciprocity of enforcement gave no certainty of recovery. I consider that there remains some weight to be attached to the need to enforce any costs judgment in Hong Kong or possibly elsewhere; but it is small and must be considered together with the matters next mentioned.

26 As earlier noted, Mr Larpin is a wealthy man. The Defendants relied on that for the submission that ordering Mr Larpin to provide security for costs would not occasion him any difficulty or prejudice. The Plaintiffs relied on that for the submission that there was no reason to think that Mr Larpin would be unable or unwilling to satisfy any costs order made against him such that enforcement became necessary. They added that there was no evidence that Mr Larpin had conducted himself in a manner suggesting that he would not voluntarily do so, and that he had paid without question costs orders made in the Lew proceedings.

27 I do not regard the Defendants' submission as providing a factor in favour of ordering security for costs. It could negate a potential factor against it, but not one in play because the Plaintiffs did not raise stifling or hardship. The costs orders in the Lew proceedings were for small amounts, and their

payment is not a good indicator of Mr Larpin's willingness to pay a costs order of the magnitude now envisaged. However, I consider there is weight in the facts that Mr Larpin is a person of means, that as a Hong Kong resident he is likely to have assets in that jurisdiction, and that there is no evident reason for him to avoid meeting a costs order or seek to frustrate enforcement.

Decision

28 In *Jurong* at [14], it was said that "[w]here the court is of the view that the circumstances are evenly balanced it would ordinarily be just to order security against a foreign plaintiff". The Defendants appealed to this as their fall-back position. However, I am satisfied that the balance is not even, but comes down in the Plaintiffs' favour. In my view, it would not be just to order security for costs.

29 I therefore order that the application be dismissed. In the ordinary course, the Defendants should pay the Plaintiffs' costs of the application. If the parties are unable to agree on the amount, they should file and exchange written submissions within 21 days, not more than three pages in length, including whether they agree to a determination on the papers.

Roger Giles
International Judge

Christopher Anand Daniel and Harjean Kaur (Advocatus Law LLP)
for the plaintiffs;

Ramesh Kumar s/o Ramasamy, Alyssa Tan Shu-Ning and Amanda Lim Min Li (Allen & Gledhill LLP) for the defendants.
