IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1989] SGHC 92

SCT APPEAL NO 4 OF 1989

Between

GROUNDS OF DECISION

Version No 1: 11 Sep 2026 (01:05 hrs)

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Oxley Travel Service Pte Ltd v Lee Kok Kian

[1989] SGHC 92

SCT APPEAL NO 4 OF 1989
T S Sinnathuray J
20 October 1989

1 Cur Adv Vult

2 On 24 January 1989, the appellants, Oxley Travel Service Pte Ltd, entered into a written contract with Lee Kok Kian, the respondent, and 47 other participants, to provide them with a nine-day package tour to Hokkaido, Japan, from 7 February to 15 February 1989, for the sum of $2,598 each.

3 The relevant contract is an exhibit to the affidavit of Mdm Ngang Sok Eng, a director of the appellants, which she had filed on 8 November 1989 in Originating Motion No 10 of 1989 for leave to appeal against the decision of the small claims tribunal, the subject matter of this appeal.

4 In that tribunal, on 29 March 1989, the respondent, Lee Kok Kian, filed a representative claim on behalf of himself and 29 other claimants, claiming $700 per person. In this representative claim which is in Form 3 of The Small Claims Tribunal Rules 1984 the respondent affixed his signature as a representative claimant and annexed to it at pp 2 and 3 are itemized 27 other claimants. However, when one counts the 27 items one finds that there are in fact a total of 30 claimants.

5 Pausing here, the order of court of the small claims tribunal dated 25 September 1989 which says that the respondents, `do pay the representative claimant, Lee Kok Kian, and 27 other claimants, the sum of $500 each` is therefore wrong. It should be `that the respondents do pay the representative claimant, Lee Kok Kian, and 29 other claimants ...`. So, there is a material error regarding the number of claimants in the order of court.

6 More importantly, Mr Kor, for the appellants, has submitted that there has been a non-compliance of s 15(4)(a) of the Small Claims Tribunal Act (Cap 308) (the Act), in that Form 3 had not been signed by all the claimants before the hearing of the matter by the tribunal. Section 15(4)(a) reads as follows:

> *the Registrar may permit the claim to be filed notwithstanding that it has not been signed by all the claimants or persons represented on condition that all the claimants or such persons shall do so before the date of hearing;*

7 From the documents in the record of appeal, it is clear that there is no document to show that all the claimants had in fact signed the claim before the date of the hearing. The effect of the claimants not having signed would bring into play s 15(4)(b) which provides that `the name of a claimant or person represented who has not so signed the claim before the hearing may, if the tribunal so directs, be deleted from the claim and the amount of the claim reduced accordingly.` Again, there is nothing in the record of appeal that the tribunal before the hearing had allowed the claim to proceed, notwithstanding that all the claimants had not signed, or had ordered the deletion from the claim of all those claimants who had not signed the claim. So, this would also vitiate the order of court of the tribunal.

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8 Another ground of appeal is that the appellants had not been given a fair hearing before the tribunal. On this, Mdm Ngang has affirmed in her affidavit as follows:

> *7 On the day of the hearing of the said claim on 25 September 1989, I went to the small claims tribunal with the respondent`s marketing manager, Mr Loh Mun Loong, who handled all the relevant correspondence and documents relating to the claim herein. Not being familiar with the practice and procedure of the tribunal, I went into the office of the referee alone without carrying all the relevant documents which were held by Mr Loh.*

> (8) My original intention was to have Mr Loh present with me at the hearing of the said claim as Mr Loh is familiar with all the relevant correspondence and documents and I am not. But when I requested permission from the referee to allow Mr Loh to be present, my request was turned down.
>
> (9) What is more disturbing is the fact that even my request to collect all the respondent`s documents pertaining to the said claim from Mr Loh who was waiting outside the office of the referee was refused. The referee alleged that not having the said documents with me would appear to show that the respondent is not interested in the said claim.

9 Now, this affidavit was served on the respondent at the leave to appeal stage. He did nothing about it; he did not even attend the hearing when leave to appeal was granted; there is no rebuttal by the respondent who appears in person before me as to what Madam Ngang has said in her affidavit. Accepting the affidavit evidence, it follows that prima facie the appellants had not been given a fair opportunity to present their case fully to the small claims tribunal. Here, I would observe that the tribunal is required under s 27 of the Act to hear claims, having regard to the principles of natural justice.

10 For the reasons given, both grounds of appeal must succeed. As to what order I should make, Mr Kor for the appellants has referred me to s 36 of the said Act. It is his submission that having regard to the circumstances I have

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described, the proper course to take is under para (c) of the section and that is to remit this case back to the tribunal with such directions as I think proper. That I do.

11 I order that this case be remitted to the small claims tribunal, with the following directions: (a) that the case be heard by another referee; (b) that there be compliance of s 15(4) of the Act; and (c) that full opportunity be afforded to the appellants under s 27 of the Act.

12 I also order that the respondent pay the costs of this appeal fixed at no more than $500 provided that the small claims tribunal makes an award in his favour, and I direct that the tribunal deduct this sum, or any other smaller sum it may award to the respondent as costs to the appellants.

13 ***Appeal allowed.***

T S Sinnathuray J

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