

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1990] SGHC 91

OS 162/1990

Between

Kawakami (S) Pte Ltd

... Applicant

And

Fudo Construction Co Ltd

... Respondent

GROUND OF DECISION

Civil Procedure — Judgments and orders

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Kawakami (S) Pte Ltd v Fudo Construction Co Ltd

[1990] SGHC 91

OS 162/1990
Chan Sek Keong J
26 November 1990

1 This was an application by the claimants under O 24 r 17 of the Rules of the Supreme Court 1970 for revocation and/or variation of two interlocutory orders of court. The said rule provides as follows:

Any order made under this Order (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the cause or matter in connection with which the original order was made.

2 The orders of court were the order of Lai Kew Chai J made on 16 March 1990 (the first order) and the order of Yong Pung How J made on 27 July 1990 (the second order). The first order ordered as follows:

(1) the parties exchange the bundles of documents within 14 days from the date of order made hereof;

(2) there be inspection of documents within 28 days from the date of order made hereof; and

(3) the costs of this application be referred to the arbitrator for his decision.

3 The second order ordered as follows:

(1) the claimants' action be dismissed with costs including the costs of this application to be taxed unless the claimants do within twenty-one (21) days from the date of order made hereon serve the bundles of documents on the respondents pursuant to the order of court dated 16 March 1990;

(2) the claimants do file an affidavit within twenty-one (21) days from the date of order made hereon verifying that all documents have been served pursuant to the said order of court dated 16 March 1990; and

(3) the costs of this application to be referred to the arbitrator for his decision.

4 The application before me was to revoke and/or vary the two orders in the following manner:

(1) that in place of the said orders the parties to the arbitration proceedings be ordered to serve on each other a list of documents relating to the issues in the arbitration proceedings within 60 days from the date of the order to be made herein and file an affidavit verifying such lists;

(2) that in place of the said orders there be inspection of documents within 30 days of the delivery of the reslists;

(3) that the parties after the exchange of copies of bundles of documents be at liberty to apply for such further and better lists of documents as may be considered relevant to the arbitration proceedings;

(4) that the order of Mr Justice Lai Kew Chai made on 16 March 1990 and the order of Mr Justice Yong Pung How made on 27 July 1990 be revoked; ...

5 I dismissed the application after hearing counsel for the parties. The claimants have appealed.

6 The material facts leading to this application are set out in the grounds of judgment given by Yong Pung How J on 12 November 1990. The claimants relied on the following grounds in support of their application:

- (1) the first order was a nullity in that under O 24 the court had power to order the making and delivery of a list of documents (which should be in Form 40) but not to exchange bundles of documents;
- (2) the first order was ambiguous; and
- (3) the second order was ultra vires O 24 r 16(1) as the first order was a nullity.

7 I was puzzled by this notion of `nullity` in relation to the said orders. Where the court has jurisdiction, as here, any order made in exercise of such jurisdiction can never be null and void. It can be wrong on other grounds, eg the court has applied the law wrongly or applied the wrong law or exercised its discretion wrongly, or found the facts wrongly, etc

8 In my view, counsel for the claimants has adopted a pedantic and formalistic approach to O 24. Discovery of documents is one of the means to achieve a fair and more transparent trial. Each party is required to disclose to the other the relevant documents they have or in their power to have so that each may not be taken by surprise by the other, subject to the law as to public and private interest immunity against disclosure. As each case that comes before the courts is different from the next, O 24 r 2(5), as expected, is expressed in broad terms as follows:

*On the application of any party required by this Rule to make discovery of documents, the Court **may** -*

(a) order the parties to the action or any of them shall make discovery under paragraph (1) [requiring exchange of a list of documents] of such documents or classes of documents only, or

as to such only of the matters in question, as may be specified in the order; or

...

9 Similarly, O 24 r 3(1) provides as follows:

*Subject to the provisions of this Rule and of Rules 4 and 8, the Court **may order any party to a cause or matter (whether begun by writ, originating summons or otherwise) to make and serve on any other party a list of the documents which are or have been in his possession, custody or power relating to any matter in question in the cause or matter, and may at the same time or subsequently also order him to make and file an affidavit verifying such list and to serve a copy thereof on the other party.***

10 Instead of ordering a list of documents, Lai Kew Chai J decided to order that a bundle of documents be exchanged. He could have made an order directing a list of documents be made up and served but he made the order he did because, as I was told, the arbitrator had made a similar order. The dispute being subject to arbitration, Lai Kew Chai J must have been satisfied that the arbitrator's direction was made to suit the circumstances of the case.

11 I was unable to see why Lai Kew Chai J was wrong in making the first order in the form that he did. The said order has to be read sensibly. Prima facie, it referred to all documents connected with the dispute. It allowed the parties to sort out the relevant documents for exchange. The respondents, acting on the said order, did serve on the claimants 24 bundles of documents up to 19 October 1990. The claimants did not complain that the discovery was inadequate. Their complaint was that discovery in that manner avoided the requirements of Form 40. The claimants themselves also delivered copies of documents to the respondents, albeit intermittently. Hence the second order. Before me, they complained that they were uncertain as to what documents they should deliver.

They even complained that the two orders of court did not say whether original documents or copies should be delivered! Paragraphs 5 and 6 of the affidavit filed on behalf of the claimants contained the complaint that Yong Pung How J made the second order in spite of their stand that they had delivered all the documents.

12 Before me, they reiterated this stand. Counsel for the claimants also confirmed that his clients had given everything. Counsel for the respondents did not complain about any failure on the part of the claimants to comply with the second order. That being the position of the claimants, I did not understand the purpose of this application except perhaps to assuage the claimants that any general compliance with the said orders would constitute full compliance thereof.

13 I was also unable to see how the second order was `ultra vires` O 24 r 17. The second order was made under that Rule to enforce the first order which was then valid and enforceable in accordance with its terms.

14 For the above reasons, I found that no sufficient cause had been shown to revoke or vary the first order or the second order.

15 ***Application dismissed.***

Chan Sek Keong J

Low Tiang Hock (Donaldson & Burkinshaw) for the claimants
Tan Yeow Choo (May Oh & Wee) for the respondentsTan Yeow
Choo (May Oh & Wee) for the respondents
