

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1992] SGHC 124

Civil Appeal No 45/91

Between

Lam Hong (S) Pte Ltd

... Plaintiff

And

Chee Wan Long

... Defendant

GROUND OF DECISION

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Lam Hong (S) Pte Ltd v Chee Wan Long

[1992] SGHC 124

Civil Appeal No 45/91
Chua F A J
08 May 1992

1 Judgment:

2 Coram: F A Chua J

3 GROUNDS OF DECISION

4 Bala Enterprise Pte Ltd (plaintiffs) sued Chee Wan Long (respondent) for the sum of \$37,679.25 being the balance monies owing by the respondent to the plaintiffs for materials sold to the respondent under Invoice No 6618 dated 2 November 1983. One of the two items on the Invoice was in respect of the sale of 127.51 tons of used anchor chains delivered on 1 November 1983 to the yard of Lam Hong (S) Pte Ltd (appellants/Third Party) at the price of \$28,689.75 (at \$225.00 per ton).

5 The respondent instituted Third Party proceedings against the appellants/Third Party and filed a Statement of Claim claiming a sum of \$35,702.80 being the price of 127.51 tons of anchor chains sold and delivered to the appellants/Third Party at a price of \$280.00 per ton.

6 On 21 May 1986 the plaintiffs obtained judgment against the respondent for the sum of \$37,679.25 as claimed.

7 On 3 May 1991 the district judge Mr Adap Singh gave judgment for the respondent in the sum claimed. The appellants/Third Party appealed against the decision of the district judge on 11 May 1991.

8 The appellants/Third Party applied to the district court for stay of execution pending the hearing of the appeal. One of the grounds for stay was that the respondent had to file an application for relief under s 17(2) of the Business Registration Act (the Act). The respondent carried on business under the name of Evergreen Hardware Co and the Certificate of Registration has expired and not renewed.

9 The respondent took out a Summons in Chambers No 7278/91 in the district court seeking a declaration that no relief was necessary under s 17(2) of the Act; in the further alternative relief be granted to the respondent under s 17(2) of the Act.

10 The respondent's Summons came before Mr Adab Singh on 3 April 1991 and 7 September 1991 when the application was dismissed.

11 The respondent filed a Notice of Motion in this appeal seeking the following orders:

12 (1) This application do stand for hearing next after the hearing of the Appeal herein or at the same time of the hearing of the said Appeal.

13 (2) (a) A Declaration by the Court that no relief is necessary under Section 17 (2) of the Business Registration Act by virtue of Section 17 (4) of

the said Act in respect of the oral contract for sale between the Respondent/Defendant by himself or through his agent and the Appellant/Third Party as set out in the Statement of Claim and Reply of the Respondent/Defendant against the Appellant/Third Party.

14 AND/OR

15 (b) Relief be given to the Respondent/Defendant against the disability imposed by section 17 (1) of the Business Registration Act on such conditions as the Court deems just and expedient in respect of the said contract.

16 The Motion came on for hearing on the day fixed for the hearing of the appeal. Mr Kumar, counsel for the appellants/ Third Party, submitted that the Motion should be dismissed with costs on the ground that the matter was res judicata and that no appeal against the decision of the district judge dismissing the respondent's similar application for relief under s 17(2) of the Act had been filed by the respondent. 2 Mr Gopal, counsel for the respondent, said that the district judge dismissed the application because he was functus officio but Mr Kumar said that the district judge heard the merits of the application and he dismissed it with costs.

17 I directed Mr Gopal to apply for the notes of argument recorded by the district judge and adjourned the hearing of the Motion and proceeded to hear the appeal. The appeal was part-heard and adjourned to a date to be fixed.

18 At the end of the hearing of the appeal at the resumed hearing on 30 March 1992, I proceeded to hear the Motion. Mr Gopal for the respondent then tendered a certified copy of the Notes of Argument recorded by Mr Adap Singh on 3 August 1991 and 7 September 1991.

19 Before Mr Adap Singh, counsel for the respondent tendered an affidavit filed by the respondent in support of the application and made his submissions on the merits.

20 Counsel for the appellants/Third Party submitted that the trial court was functus officio as judgment was perfected and the Notice of Appeal had been filed. Counsel for the respondent submitted that the court was not functus officio. Mr Adap Singh did not accept the submission of counsel for the appellants/Third Party that the court was functus officio.

21 Counsel for the appellants/Third Party then proceeded to submit on the merits and in the course of the submissions of counsel for the appellants/Third Party, counsel for the respondent applied for leave to amend the Summons and applied for adjournment to amend the Summons and to check with the Registry of Business Names.

22 Before the resumed hearing on 7 September 1991 the respondent had filed a Summons No 10436/91 applying to amend his earlier Summons No 7278/91. At the resumed hearing counsel for the respondent asked that Summons No 10436/91 be stood down and submitted that it was not necessary to amend the Summons No 7278/91 and asked for the court's ruling whether Summons No 7278/91 need to be amended.

23 Counsel for the appellants/Third Party said "Original application does not relate to any specific contract and any specific relief".

24 The court said "Original application does not set out any specific contract and any specific relief claimed in respect thereto".

25 Thereupon counsel for the respondent said that he was proceeding with his application to amend the original Summons.

26 The court granted leave to the respondent to amend in terms of Summons No 10436/91 with costs fixed at \$250 to be paid to the appellants/Third Party.

27 Summons No 10436/91 sought the following orders:

28 (a) A declaration by the court that no relief is necessary under s 17(2) of the Business Registration Act by virtue of s 17(4) of the said Act in respect of the alleged oral contract for sale entered between the defendant by himself or through his agent and the Third Party as set out in the Statement of Claim and Reply of the defendant against the Third Party. Further or in the alternative (b) Relief be given to the defendant under s 17(2) of the said Act in respect of the said contract as a defaulter.

29 Counsel for the respondent submitted that the application for relief could be made at any time even after judgment had been given and that the application would not prejudice the appellants/Third Party.

30 Counsel for the appellants/Third Party then continued with his submissions on the merits.

31 Mr Adap Singh after hearing the submissions dismissed the application which was before the court with costs fixed at \$500 to be paid forthwith and the costs fixed at \$250 was also ordered to be paid forthwith.

32 The prayers in the Motion filed by the respondent in this appeal are similar to the prayers in Summons No 10436/91 which was before the district

judge. There can be no doubt that the district judge considered the merits of the application. The merits were argued before him by both counsel. After considering the merits the district judge dismissed Summons No 10436/91.

33 The respondent has not appealed against the decision of the district judge. He cannot bring this Motion before this Court and I dismissed it with costs.

34 The respondent carried on business under the name of Evergreen Hardware Co. The firm was first registered on 5 October 1978. The Certificate of Registration issued by the Registrar of Businesses was valid for a period of one year from date of issue and has to be renewed from year to year thereafter. The respondent failed to renew the Certificate in October 1981 with the result that he did not have a valid certificate of registration in 1983.

35 Section 17(1) of the Act provides:

36 Where a person required to be registered under this Act -

37 (a) carries on business without a valid certificate of registration; or

38 (b) fails to furnish any information required under section 12,

39 then the rights of the defaulter under or arising out of any contract, in relation to the business carried on by the defaulter in respect of which no valid certificate of registration is in force or there is non-compliance with section 12, made or entered into by or on behalf of the defaulter at any time while he is in default shall, subject to subsection (2), not be enforceable by action or other legal proceedings either in the business name or otherwise.

40 When the respondent went to see the appellants/Third Party for payment, he presented a bill in the name of Evergreen Hardware Co. The respondent was carrying on business without a valid certificate of registration. The purported contract entered into between Evergreen Hardware Co and the appellants/Third Party is not enforceable by action or other legal proceedings either in the business name or in the name of the respondent. I accordingly allowed the appeal of the appellants/Third Party with costs.

Chua F A J

K Shanker Kumar (David See & Co) for the appellant
Veno Gopal (R S Balan & Co) for the respondent
