

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1993] SGCA 1

CA 57/1992

Between

Chee Wan Long

... Appellant

And

Lam Hong (S) Pte Ltd

... Respondent

GROUND OF DECISION

Civil Procedure — Judgments and orders; Civil Procedure — Parties

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Chee Wan Long v Lam Hong (S) Pte Ltd

[1993] SGCA 1

CA 57/1992

Chao Hick Tin J; Goh Joon Seng J; L P Thean J

05 January 1993

1 Bala Enterprise Pte Ltd (the plaintiffs) sued Chee Wan Long (the defendant) for the sum of \$37,679.25 being balance of price of goods sold to the defendant under Invoice No 6618 dated 2 November 1983. This included the sum of \$28,689.75 being the price of 127.51 tons of used anchor chains delivered on 1 November 1983 to the premises of Lam Hong (S) Pte Ltd (the third party) at \$225 per ton.

2 The defendant in turn instituted third party proceedings against the third party for the sum of \$35,702.80 being the price for the said 127.51 tons of used anchor chains at \$280 per ton.

3 On 21 May 1986 the plaintiffs obtained judgment against the defendant for the sum of \$37,679.25 as claimed and costs.

4 On 3 May 1991, the learned district judge Mr Adap Singh awarded the defendant judgment against the third party for the sum claimed with interest at 6%pa from the date of the third party notice to date of judgment and costs.

5 The third party thereupon appealed to the High Court in District Court Appeal No 45 of 1991 against the decision of the learned district judge on 11 May 1991. The third party also applied to the district court for stay of execution pending the hearing of the appeal. One of the grounds for stay was that the defendant had to file an application for relief under s 17(2) of the Business Registration Act (Cap 32) ('the Act') as the defendant had carried on business under the name of Evergreen Hardware Co and the certificate of registration had expired and had not been renewed at the material time.

6 The defendant applied by Summons-in-Chambers No 7278/91 as amended by Summons-in-Chambers No 10436/91 in the district court seeking the following orders:

(a) A declaration by the court that no relief is necessary under s 17(2) of the [Act] by virtue of s 17(4) of the said Act in respect of the alleged oral contract for sale [of the used anchor chains] 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 under s 17(2) of the said Act in respect of the said contract as a defaulter.

7 The learned district judge dismissed the application on 7 September 1991 after hearing arguments that he was functus officio (judgment having been perfected) and on the merits of the application. No reasons were however given by the learned district judge for dismissing the application.

8 On 22 January 1992, the defendant filed a notice of motion in the said District Court Appeal No 45 of 1991 seeking the same relief as in the summons-in-chambers that had been dismissed by the learned district judge.

9 The district court appeal and the motion in the said appeal came up for hearing before Chua J. The learned judge dismissed the motion. In his grounds of decision he stated:

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.

10 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.

11 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.

12 Section 17(1) of the Act provides:

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

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

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

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.

13 The defendant thereupon appealed against the decision of Chua J dismissing the motion and consequently allowing the appeal by the third party against the judgment of the learned district judge.

14 The appeal came up for hearing before us. We allowed the appeal with costs. We now give our reasons.

15 The application before Chua J was made under s 17(2) of the Act which reads:

A defaulter, referred to in subsection (1), may apply to the court for relief against the disability imposed by this section, and the court, on being satisfied that the default was accidental or due to inadvertence or some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may grant such relief either generally, or as respects any particular contract, on condition that the costs of the application are paid by the defaulter, unless the court otherwise orders, and on such other conditions (if any) as the court may impose; but that relief shall not be granted except on such service and publication of notice of the application as the court may order, nor shall relief be given in respect of any contract if any party to the contract proves to the satisfaction of the court that, if the provisions of this Act had been complied with, he would not have entered into the contract.

16 By s 17(5) of the Act, `court` in s 17 means the High Court or a judge thereof. But similar powers to grant relief are vested by s 17(6) in the district and magistrates` courts in proceedings to enforce a contract commenced by a defaulter in the district and magistrates` courts.

17 An application for relief under s 17(2) may be made even after judgment has been entered when the judgment is under appeal. In **Re Shaer**,¹ the creditor, a Pole by the name of Moysiez or Moses Silbermann, had in his trade name of Morris Silverman sued the debtor Abraham Shaer for o217 10s 9d. In fact he had not registered his trade name under the Registration of Business Names Act 1916.

18 He obtained leave from the master under O 14 to sign judgment against the debtor for o120 unless the debtor paid that sum into court and the rest of the action was remitted to the county court. The o120 was not paid into court and the creditor signed judgment. The debtor appealed. Fraser J affirmed the master's order and at the same time granted the creditor relief under s 8 of the Registration of Business Names Act 1916, from any disability in respect of the contract sued upon. The debtor appealed to the Court of Appeal contending that relief after judgment could not be granted under the Act. The appeal was dismissed. In his judgment, Lord Hanworth MR at p 357 said:

Section 8 is in wide terms, and gives power to the defaulter to apply for relief, and power to the court to grant relief either generally or in respect of any particular contracts on such conditions as the court may impose. Fraser J granted relief generally in respect of the contract in question, and that relief got rid of the disability from which the plaintiff was suffering, because when the relief was granted he ceased any longer to be a defaulter under the Act and his disability was removed.

19 It is said that owing to the non-registration of this trade name all the proceedings in this case have been abortive, and in as much as judgment has been given in respect of the o120, and that judgment has been passed and entered, it is not possible for relief to be given after that and for the creditor to be rehabilitated into the position he would have occupied if he had duly registered. That contention amounts to accepting the Act from one point of view and discarding it from another. In my judgment the effect of the order made by

Fraser J granting relief was to prevent the disability imposed by s 8 of the Act from applying to the creditor at all in respect of this contract, and to enable valid proceedings to be taken and a valid judgment obtained in respect of the contract. The effect of that relief was to rehabilitate the proceedings from the beginning, and consequently the writ and the order for payment were validated.

20 Sargent LJ at p 359 in agreeing with the other members of the Court of Appeal added this observation:

In this case it is to be observed that at the time when Fraser J granted relief, the judgment in which the Master had made an order was under appeal to Fraser J, so that the action was then before him, and simultaneously with granting relief under s 8 against the disability, he also affirmed the judgment for payment made by the Master, and in those circumstances I doubt whether it is really a case of relief having been granted after judgment had been given.

21 The principle in **Shaer**'s case¹ was cited by Spenser-Wilkinson J in **K Pritam Singh v KV Thaver** [1949] MLJ 267 who said at p 268:

*The principle laid down in **Shaer**'s case appears to me to be that so long as the proceedings in which the contract is in question continue the fact that a judgment has been given does not prevent the High Court from giving relief. Thus the High Court can uphold a decision against a plaintiff and simultaneously remove the effect of that decision by granting relief - but this must be done in the same proceedings.*

22 In our view, the judgment of the learned district judge having been perfected, he was functus officio when the defendant's application for relief under s 17(2) of the Act in Summons No 10436/91 came before him. Accordingly, the matter was not res judicata when the defendant applied for relief by motion at the hearing of the appeal by the third party before Chua J.

23 We now turn to the merits of the defendant's application before Chua J. On perusing his affidavit in support thereof, we are satisfied that his default was

accidental or due to inadvertence because of his frequent travels to Bangkok and Malaysia and the acquisition of his business premises in Singapore by the government. For a time he also lived in Thailand. It was not contended by the third party that if the provisions of the Act had been complied with, they would not have purchased the used anchor chains.

24 Accordingly we were of the view that relief ought to be granted to the defendant under s 17(2) of the Act.

25 On the substantive appeal by the third party against the decision of Mr Adap Singh, the learned district judge in his 55-page judgment examined in detail the evidence given before him before arriving at this conclusion:

On the evidence I also found that the defendant notified TPW1 and TPW2 during the said visit on 3 November 1983 that he (the defendant) was the owner of the anchor chains in question and that the price of the goods was \$280 per ton.

26 I further found on the evidence that the defendant told TPW1 and TPW2 when he visited them on 3 November 1983 that Loh Yong Chia was his (the defendant's) broker, that Loh Yong Chia was a bankrupt and that Loh Yong Chia had no authority to receive payment. The defendant also warned both TPW1 and TPW2 that if they did pay Loh Yong Chia he would make a police report.

27 I was of the view that the third party did not act bona fide. I have already set out at pp 27, 28 and 29 the reasons why I did not accept TPW1's allegation that at the time the anchor chains were purchased he had no reason to believe or suspect that Loh Yong Chia was not the rightful owner. Even after the defendant had visited the third party on 3 November 1983 and informed them that Loh Yong Chia was his broker, that Loh was a bankrupt and had no authority to

receive payment, the third party did nothing to stop payment on the cheque for \$5,000 paid to Loh Yong Chia on 1 November 1983. In fact, despite being so notified and warned by the defendant that if they paid Loh Yong Chia, he (the defendant) would lodge a police report, TPW1 and TPW2 were not interested in what the defendant told them, they did not bother to inquire whether what the defendant told them was true and deliberately paid the balance to Loh Yong Chia on 5 November 1983. In addition, they did not inform the defendant that they had paid the balance to Loh Yong Chia on 5 November 1983 until 8 November 1983 although the defendant rang them up daily from 4 to 8 November 1983. The third party acted mala fide although the defendant told TPW1 and TPW2 that if they did not agree to his price of \$280 per ton, he would take back the goods.

28 TWP1 is one Patrick Chee Kok Seng, a manager of the third party. TPW2 is one Victor See Yong Leng, the managing director of the third party.

29 This was a finding of fact by the learned district judge. The burden laid on the third party to show that the learned district judge was wrong in his finding that the third party had been informed by the defendant that he was the owner of the used anchor chains sold through and delivered to them by his broker Loh Yong Chia at \$280 per ton. Instead of paying the defendant, the third party acting in bad faith chose to make payment to Loh Yong Chia at \$180 per ton. We had not been persuaded that the learned district judge was wrong in so finding. We therefore allowed the defendant's appeal. ***Appeal allowed.***

Chao Hick Tin J
Goh Joon Seng J
L P Thean J

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