IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1995] SGCA 73

Motion in CA 55/1995

Between

Seabridge Transport Pte Ltd

… *Appellant*

And

Olivine Electronics Pte Ltd

… *Respondent*

GROUNDS OF DECISION

Civil Procedure — Appeals; Civil Procedure — Appeals

Version No 1: 29 Oct 2026 (23:45 hrs)

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Seabridge Transport Pte Ltd v Olivine Electronics Pte Ltd

[1995] SGCA 73

Motion in CA 55/1995
Karthigesu JA; Lai Kew Chai J; L P Thean JA
19 September 1995

1 Cur Adv Vult

2 The question of law which arises by this notice of motion filed by the respondents on 14 July 1995 is whether the appellants` notice of appeal filed on 17 May 1995 (the notice of appeal) is a valid notice of appeal having regard to the provisions of s 34(1) of the Supreme Court of Judicature Act (the Act), such that this appeal by the appellants can be maintained.

3 The facts giving rise to the appellants filing the notice of appeal are these. The respondents, Olivine Electronics Pte Ltd (Olivine) having commenced an action against the appellants, Seabridge Transport Pte Ltd (Seabridge) for damages arising from their delivery of goods without the production of the original bill of lading under which Seabridge had carried them applied for summary judgment by way of a summons-in-chambers in the suit by which the action had been commenced. The summons-in-chambers was heard by an assistant registrar on 6 January 1995 who granted Seabridge leave to defend the action on condition that Seabridge provided Olivine with a bank guarantee for US$80,000 within 21 days, failing which Olivine would be at

liberty to enter interlocutory judgment against Seabridge. Both, Olivine and Seabridge, were aggrieved by the learned assistant registrar`s decision: Olivine wanted an interlocutory summary judgment and Seabridge wanted unconditional leave to defend. Accordingly, both appealed to the judge-in-chambers. Their appeals were heard by Goh Joon Seng J in chambers on 18 April 1995, when the learned judge dismissed both appeals and affirmed the learned assistant registrar`s decision granting Seabridge conditional leave to defend the action on the same terms imposed by the learned assistant registrar but allowed Seabridge a further 21 days from 18 April 1995 within which to furnish the bank guarantee for US$80,000.

4 Seabridge, still aggrieved, intended to appeal against the order of the learned judge. This is how they set about it. They applied by way of a summons-in-chambers on 8 May 1995 that the time prescribed by s 34(1)(c) of the Act be extended for a period of 22 days from 18 April 1995; that the time prescribed by O 56 r 2(1) of the Rules of the Supreme Court (the Rules) be extended to a period of 18 days from 18 April 1995; and that the time prescribed by O 57 r 4(1) of the Rules be extended to a period of 21 days from 17 May 1995. This summons-in-chambers was heard by another assistant registrar on 17 May 1995 who dismissed Seabridge`s application.

5 Notwithstanding that Seabridge had failed in this application they nevertheless, on the same day, ie 17 May 1995, filed the notice of appeal appealing against the order of Goh Joon Seng J made in chambers on 18 April 1995 (referred to hereafter as `the order of Goh Joon Seng J`). Then, despite having filed the notice of appeal on 17 May 1995 appealing against the order of Goh Joon Seng J, Seabridge, through their solicitors, wrote in to the registrar on 18 May 1995 applying for leave to address further arguments to the learned

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judge. The registrar replied on 22 May 1995 that the learned judge had certified that no further arguments were needed.

6 Olivine filed this notice of motion on 14 July 1995 for the notice of appeal to be set aside and Seabridge`s appeal herein to be struck out. In the meanwhile, since Seabridge had not complied with the order of Goh Joon Seng J within the time limited and there being no stay of the learned judge`s order, Olivine entered interlocutory judgment on 23 May 1995.

7 We heard Olivine`s notice of motion on 23 August 1995 when we reserved our judgment and directed that, pending the delivery of our judgment, no further steps should be taken towards entering a final judgment and enforcement thereof.

8 Mr Steven Chong`s arguments for Olivine are simple and straightforward. In summary they are that the order of Goh Joon Seng J was undoubtedly an interlocutory order made in chambers and therefore the relevant statutory provision governing the appeal from such an order was s 34(1)(c) of the Act which required, as a prerequisite, that an application to the learned judge for further arguments in court must first be made within seven days of the making of the order. Only after the judge had certified that he required no further argument, on such an application being made, that the right of appeal to the Court of Appeal could be invoked. Since Seabridge had not followed this procedure they had forfeited their right of appeal and the notice of appeal filed by Seabridge was bad and had to be set aside and Seabridge`s appeal struck out. In anticipation of Mr Loo Dip Sing`s argument for Seabridge, Mr Chong also contended that s 34(1)(b) of the Act did not give Seabridge an unqualified right to appeal against the order of Goh Joon Seng J without first complying with the provisions of s 34(1)(c) of the Act.

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9 On the other hand Mr Loo contended that s 34(1)(c) of the Act was not applicable to the order in question as it came within the exception in s 34(1)(b) of the Act. He contended that s 34(1)(b) created an exception. The exception was that where the appellant was the defendant in an action and the order made by the judge gave that defendant conditional leave to defend the action, then, even though the order was made in chambers, s 34(1)(c) did not apply. Seabridge was the defendant in the action. What s 34(1)(b) did was to take away the plaintiff`s right of appeal where a defendant was given conditional leave to defend but preserved the defendant`s right of appeal. Section 34(1)(b) stood independently of s 34(1)(c).

10 We will examine these rival contentions in greater detail. The starting point must of course be s 29A(1) of the Act which encompasses the jurisdiction of the Court of Appeal to hear appeals from the High Court. It reads:

> *The civil jurisdiction of the Court of Appeal shall consist of appeals from any judgment or order of the High Court in any civil cause or matter whether made in the exercise of its original or of its appellate jurisdiction, subject nevertheless to the provisions of this Act or any other written law regulating the terms and conditions upon which such appeals may be brought.*

11 Wide though this jurisdiction is, there is a limitation to the appeals the Court of Appeal may hear by the words, `subject nevertheless to the provisions of this Act ... regulating the terms and conditions upon which such appeals may be brought.` We will note in passing that s 29A(1) of the Act is in pari materia with the former s 29 of the Act it replaced by Act 16 of 1993.

12 The limitation to the appeals the Court of Appeal may hear is contained in s 34 of the Act. It is only necessary to set out s 34(1) as s 34(2) deals with matters that may be brought before the Court of Appeal with the leave of the Court of Appeal or a judge. Section 34(1) reads:

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> *No appeal shall be brought to the Court of Appeal in any of the following cases:*
>
> *(a) where a Judge makes an order giving unconditional leave to defend an action or an order setting aside unconditionally a default judgment;*
>
> (b) except if the appellant is the defendant, where a Judge makes an order giving leave to defend on condition that the defendant pays into court or gives security for the sum claimed or an order setting aside a default judgment on condition as aforesaid;
>
> (c) subject to any other provision in this section, where a Judge makes an interlocutory order in chambers unless the Judge has certified, on application within 7 days after the making of the order by any party for further argument in court, that he requires no further argument;
>
> (d) where the judgment or order is made by consent of the parties; or
>
> (e) where, by any written law for the time being in force, the judgment or order of the High Court is expressly declared to be final.

13 So, reading s 29A(1) and s 34(1) of the Act together, as we must, it is clear from the very wording of s 29A(1) that the general right of appeal to the Court of Appeal arising from any cause or matter whether made in the exercise of the original or appellate jurisdiction of the High Court is circumscribed by the provisions of s 34(1) of the Act. Without any room for doubt the express words of paras (a), (d) and (e) of s 34(1) rule out any question of an appeal to the Court of Appeal; these paragraphs specifically refer to an order where unconditional leave to defend an action is given, or to a judgment or an order made by the consent of the parties or to a judgment or an order of the High Court expressly declared to be final.

14 In our judgment, it is equally clear, of which there can also be no doubt, that under para (b) of s 34(1) an order giving the defendant conditional leave to defend an action is not appealable at the instance of the plaintiff in that action.

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This exclusion to the general right of appeal does not apply where the defendant in the action is the appellant. The opening words of this paragraph - `except if the appellant is the defendant` - makes this clear. These words merely preserve the general right of appeal the defendant in the action always had before Act 16 of 1993 repealed the former s 34(1) and introduced the present s 34(1). This will become clear if we compare the former s 34(1) with the present s 34(1). Confining ourselves to the question of conditional and unconditional leave to defend an action, it will be seen that the former s 34(1)(b) was the only provision touching on the question of the right of appeal. The former s 34(1)(b) prohibited an appeal only where unconditional leave to defend the action was given. There was no qualification and therefore the prohibition applied equally to a plaintiff and a defendant. By implication, where conditional leave to defend the action was given both the plaintiff and the defendant were at liberty to appeal. What the present s 34(1) does is to preserve the position regarding an appeal from an order giving unconditional leave to defend the action (see the present s 34(1)(a)) and by the present s 34(1)(b) to take away the right of appeal the plaintiff in the action previously had when conditional leave to defend the action is given thus preserving the right of appeal which the defendant in the action previously had. The present s 34(1)(b) does no more than that. It does not, as Mr Loo seemed to suggest, place the defendant in the action where conditional leave to defend is given in a special position.

15 Having dealt with paras (a), (b), (d) and (e) of s 34(1) it only remains for us to consider para (c). Unlike paras (a), (b), (d) and (e), para (c) does not refer to any specific order or judgment. It refers generally to an interlocutory order made by a judge-in-chambers and provides the appeal procedure or regime that is to be followed. An interlocutory order is not defined by s 34(1)(c) or by the Act or indeed anywhere else. Now, it may be an unfortunate piece of drafting

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to have included para (c) in s 34(1) but we have no doubt in our minds that it was intended to and does, as the former s 34(2) did, provide the appeal procedure or regime for all interlocutory orders made by a judge in chambers.

16 The question then is whether the order of Goh Joon Seng J giving Seabridge conditional leave to defend the action brought against them by Olivine is an interlocutory order made in chambers. It was made in chambers and the very nature of the order showed that it did not finally dispose of the action brought by Olivine against Seabridge. It was an interlocutory order made in chambers and Mr Loo conceded that it was. If any authority is needed in support, see the judgments of this court in and (as yet unreported). Accordingly, the order of Goh Joon Seng J being an interlocutory order made in chambers, the provisions of s 34(1)(c) applied.

17 However, Mr Loo, whilst conceding that the order of Goh Joon Seng J was an interlocutory order made in chambers, nevertheless contended that the opening words of s 34(1)(c) - `subject to any other provision in this section` - took that order, which fell within s 34(1)(b), out of the province of s 34(1)(c). With respect, we are unable to agree. This is tantamount to saying that whilst all other interlocutory orders made by a judge-in-chambers are subject to the provisions of s 34(1)(c) an order giving a defendant conditional leave to defend the action made by a judge-in-chambers, although it is an interlocutory order made by a judge-in-chambers is not subject to the provisions of s 34(1)(c) simply because it fell within s 34(1)(b). This is to put a defendant who is given conditional leave to defend the action by a judge-in-chambers in a very special position which Parliament could never have intended and which is not justified by the scheme of s 34(1). Quite obviously, as Mr Chong submitted, these words refer to s 34(2) which refers to matters which are appealable but only with the leave of the Court of Appeal or a judge and since leave to appeal is required

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from either it would be otiose also to require certification by the judge that no further argument is required.

18 Seabridge have clearly failed to comply with s 34(1)(c). The notice of appeal is invalid and must be set aside. See this court`s judgment in and also at pp 164-166. It follows that the appeal herein must be struck out.

19 Mr Loo urged upon us that in the event he failed in his argument that we should nevertheless, in the exercise of our discretion, grant Seabridge an extension of time to enable Seabridge, the appellants, to comply with s 34(1)(c) of the Act. We will observe that an application to extend the time prescribed by s 34(1)(c) for a period of 22 days from 18 April 1995 was made by the summons-in-chambers filed by Seabridge on 8 May 1995 and that application was dismissed by the assistant registrar on 17 May 1995. The matter was not further pursued. We can see no good reason for exercising our discretion to extend time to enable Seabridge to pursue this appeal and we are not disposed to doing so.

20 In the event we grant an order in terms of the respondents` notice of motion dated 14 July 1995 that the notice of appeal filed by the appellants on 17 May 1995 be set aside and that their appeal entered as CA 55/95 be struck out. We also order that the costs of this motion be taxed and paid by the appellants to the respondents. The security deposit lodged in court by the appellants being no long required, we order that it be paid out to the respondents to account of the costs we have ordered to be paid to them and ***ex abundanti cautela*** the stay we previously directed is lifted.

21 ***Motion allowed.***

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Karthigesu JA
Lai Kew Chai J
L P Thean JA

Loo Dip Seng (Ang & Pnrs) for the appellants
Steven Chong and Thyaparan Kathiravel (Drew & Napier) for the respondents

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