IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1995] SGHC 22

OS858/1994

Between

Mandraki Holdings Inc

… Plaintiff

And

Agrosin Pte Ltd

… Defendant

GROUNDS OF DECISION

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

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Mandraki Holdings Inc v Agrosin Pte Ltd

[1995] SGHC 22

OS858/1994
Goh Joon Seng J
26 January 1995

1 **Judgment:**

2 Coram: GOH JOON SENG J

3 **GROUNDS OF DECISION**

4 The plaintiff is a company incorporated in Liberia.

5 The plaintiff's claim in a separate action being Suit No 971 of 1994 against Naya Navigation Co Ltd < `Naya' > a Cypriot company is for an injunction and or damages under inter alia an Assignment of Earnings dated 21 March 1994 < `the Assignment' > in respect of earnings including freight and or hire of the vessel `Dimitrakis'.

6 The Assignment was executed by Naya in favour of the plaintiff as security for a loan of US$670,000 advanced by the plaintiff to Kelvin Shipping Company Limited < `Kelvin' > . Kelvin, also a Cypriot company, is related to or otherwise associated with Naya. The loan to Kelvin was for the purchase of

the vessel `Agia Irini' now renamed `Triatic Power'. The `Dimitrakis' is owned by Naya.

7 The relevant clauses of the Assignment are:

8 (i) Cl 1.2 which defines `Earnings' as `all moneys whatsoever (and all claims for such moneys) due or to become due to or for the account of < Naya > including (but not limited to) all freight, hire ... ...'

9 (ii) Cl 3 by which Naya as security for the loan granted by the plaintiff to Kelvin assigned to the plaintiff all its rights, title and interest both present and future in and to the Earnings.

10 (iii) Cl 5 by which Naya covenanted: 5.3: to procure that the Earnings are paid, and that the persons from whom the Earnings are from time to time due are instructed to pay them, to the plaintiff or as the plaintiff may direct; 5.4: to notify the plaintiff forthwith of the details of each Contract entered into by Naya and to supply the plaintiff as soon as practicable with a copy of the same; 5.5: to give notice of the Assignment to the counter party under each contract.

11 (iv) Cl 7 by which the security constituted by the Assignment shall become immediately enforceable upon the occurrence of an Event of Default under the loan agreement.

12 Naya did not comply with any of its obligations under cl 5 of the Assignment.

13 Kelvin is also in default of its obligations on repayment of the loan to the plaintiff under the loan agreement.

14 The plaintiff had learnt that, after the date of the Assignment, the `Dimitrakis' was chartered by Naya to the defendant for carriage of cargo from Kherson to and for discharge in ports in Vietnam and Philippines. Accordingly the plaintiff served notice of the Assignment on the defendant on 13 June 1994. Confirmation of the charter was then allegedly obtained by Paul Thomas Aston, the resident partner of the plaintiff's London solicitors Holman Fenwick & Willan based in Singapore in a telephone conversation with the defendant's assistant manager, Jeremy Low on the same day. No notice of such charter had been given by Naya to the plaintiff.

15 The plaintiff thereupon obtained in Suit No 971 of 1994 from the High Court an order dated 15 June 1994 subsequently amended by order dated 29 June 1994 restraining Naya, its servants or agents, from dealing, disposing or transferring out of the jurisdiction the freight hire or earnings due to Naya from the defendant in respect of the `Dimitrakis' save in so far as the monies exceed US$900,000. A copy of the said order has been served on the defendant. The defendant has refused to respond to the plaintiff's demand to pay over the freight or charter hire allegedly due from it to Naya under the charter party in respect of the `Dimitrakis'.

16 In Suit 971 of 1994 Naya had alleged that the Dimitrakis was bare boat chartered by Naya to Momentum Marine Services (Panama) S.A. < `Momentum' > which in turn chartered the vessel to the defendant. Momentum has since been joined as a defendant in Suit 971 of 1994. Momentum is also related to or associated with Naya.

17 Accordingly on 5 September 1994, the plaintiff commenced these proceedings seeking disclosure of the documents relating to the voyage from

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Kherson to Vietnam and or Philippines between the period March 1994 to October 1994 including the following:

18 (i) all pre-fixture and post fixture correspondence;

19 (ii) charter party;

20 (iii) vessel's notice of readiness tendered at the load and discharge ports;

21 (iv) statements of fact and time sheets for the load and discharge ports;

22 (v) bills of lading;

23 (vi) all voyage correspondence between the defendant, its servants, agents and Naya and Momentum;

24 (vii) letters of indemnity issued by the defendant in favour of the owners of the Dimitrakis for issuance of clean bills of lading where damaged cargo was loaded.

25 I granted the application. The defendant has appealed against my decision. I now give my reasons.

26 The application was made under para 12 of the First Schedule to the Supreme Court of Judicature Act, Cap 322, < `the Act' > which confers on the High Court `power before or after any proceedings are commenced to order discovery of facts or documents by any party to the proceedings or by any other person in such manner as may be prescribed by Rules of Court'. The prescribed rule is Order 24 rule 7A. By sub rule (1) `an application for an order under paragraph 12 of the First Schedule to the Act for the discovery of documents

before the commencement of proceedings shall be made by originating summons ... and the person against whom the order is sought shall be made defendant to the summons.' By sub rule (3), the affidavit in support of the summons `must state the grounds for the application, the material facts pertaining to the intended proceedings and whether the person against whom the order is sought is likely to be a party to subsequent proceedings in the High Court ...'. Order 24 rule 7A is in pari materia with the English order 24 rule 7A except that the latter applies to actions or claims for personal injuries only.

27 "This < English > rule has been made under the extended rule making powers conferred originally by < the Administration of Justice Act 1970 > and now by s.35(2) of < the Supreme Court Act 1981 > in order to bring into operation ss 33(2) and 34(2) of The 1981 Act < originally ss 31 and 32(1) of A.J.A. 1970 > ... ... By the operation of this rule, the parties in personal injury litigation will be able to obtain before trial the disclosure of relevant documents from a non-party, e.g. medical and hospital records which in other classes of action, they can obtain by means of a subpoena duces tecum to attend and produce such documents at the trial. The effect of the rule is thus, in personal injury actions to advance the time for the disclosure of relevant documents - (a) by a likely party from the stage after action to the stage before action; and (b) by a non party from stage of trial to pre-trial stage ...". < Supreme Court Practice 1995 Vol 1 para 24/7A/1 > .

28 In Dunning v Board of Governors of the United Liverpool Hospitals < 1973 > 2 All ER 454 the facts as summarised in the head notes were that in 1963 the applicant, who had enjoyed good health all her life, developed a cough and was admitted to hospital for investigations. During the first three weeks after her admission she appeared to improve, but one day, when her family visited her, they found screens around her bed and were told by the ward doctor that

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she was very ill but would recover. Her speech was impaired and her face was drawn up to one side and she appeared to be gravely ill. During the next few weeks her personality appeared to change. The doctors were uncertain of the diagnosis. At first they diagnosed undulant fever and prescribed streptomycin, the orthodox treatment for that disease. Later they diagnosed another disease and prescribed other drugs. After 17 weeks the applicant left hospital but her walking and memory were still impaired and she had difficulty in doing her housework. Her condition got worse. Her family members thought that the hospital was at fault in wrongly diagnosing undulant fever and that the streptomycin prescribed for that disease had caused the impairment of the applicant's health. In 1969 the applicant obtained legal aid to get a medical opinion. She was examined by a consultant physician and neurologist who asked to see the hospital's clinical notes. The hospital refused to disclose them unless they were assured that no action would be brought against them but such an assurance was refused by the applicant's advisers. On 11th May 1970 the consultant gave his report in which he said that assessment of the medical aspect of the case had been considerably hampered by the absence of the hospital notes and that he had had to rely on the recollection over six years of medically unqualified persons, i.e. the applicant and members of her family; he was however of the opinion that the hospital were not at fault in at first wrongly diagnosing undulant fever, and that it was only speculation that the streptomycin had caused the applicant's impairment of health; but he expressed the view that her suspicion that a mistake had occurred was heightened by the failure to release the hospital notes; that the notes should be released to determine whether they confirmed his own opinion; and that if they were made available, and their contents explained to the applicant and members of her family, their minds would be set at rest. On the basis of that report the applicant was granted legal aid to take proceedings against the hospital board for damages for negligence,

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but as more than six years had elapsed since the cause of action arose, it was necessary, under the Limitation Act 1963, to obtain leave to bring the proceedings. On application being made to the judge for leave under the 1963 Act, the judge adjourned the application on the ground that the consultant's report gave no basis for an action and that it was necessary to obtain the hospital notes. On 2 August 1971, s 31 of the Administration of Justice Act 1970, which empowered the court to order disclosure of documents before the commencement of proceedings, came into operation. On 12 May 1972 the applicant applied for an order under s 31 for disclosure by the hospital board of the medical reports and case notes concerning her treatment. The judge ordered disclosure of those documents but limited the disclosure to the applicant's medical adviser. The board appealed. It was held by the English Court of Appeal (Lord Denning and James LJ with Stamp LJ dissenting) that the applicant had fulfilled the conditions stipulated by s 31 of the 1970 Act since she and the board appeared `likely to be' the parties in proceedings `in which a claim in respect of personal injuries was likely to be made'. It was immaterial that the likelihood of the claim being made was dependent on the outcome of the discovery; the words `likely to be made' in s 31 were to be construed as meaning `may' or `may well be made' if, on examination, the documents in question indicated that the applicant had a good cause of action. The court was not precluded from making an order if the only basis for saying that a claim was not likely was the absence of the documents of which discovery was sought. Accordingly, since the applicant would no doubt get an extension of time under the 1963 Act if the documents disclosed by the board pointed to negligence, the order for discovery, limited to disclosure to her medical adviser, should stand and the appeal be dismissed.

29 In delivering his judgment Lord Denning said at p 457:

30 " ... ...

31 That section refers to the rules of court. They are contained in RSC Ord 24, r 7A and r 8, which prescribed the procedure, but do not help in the interpretation.

32 Applying the section it seems to me reasonably plain

33 (1) that Mrs Dunning is `likely to be a party' if the proceedings were started; she is likely to be plaintiff;

34 (2) that the hospital board are persons who are `likely to be a party to the proceedings' if `subsequent proceedings in which a claim in respect of personal injuries ... is likely to be made.' Much turns on the meaning of the words `likely to be'. If a claim is `likely to be made' the hospital board are `likely to be' a party. They are likely to be defendants.

35 (3) They have relevant documents in their possession.

36 So the one question is this: is a claim in respect of personal injuries `likely to be made' in subsequent proceedings? To that question the answer is: it all depends on what is contained in the medical reports and case notes. If they contain information pointing to negligence on behalf of the hospital board, then a claim is `likely to be made'; but if not, then a claim is not likely. If the information does point to negligence, Mrs Dunning will, no doubt, get an extension of time under the 1963 Act, because she will not have known that she had a worthwhile cause of action until she got the medical reports and case notes.

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37 So the likelihood of a claim depends on the outcome of the discovery. It depends on what Dr Evans finds in the medical reports and case notes. How do you apply the section to this situation? It is difficult, but I think that we should construe `likely to be made' as meaning `may' or `may well be made' dependent on the outcome of the discovery. One of the objects of the section is to enable a plaintiff to find out - before he starts proceedings - whether he has a good cause of action or not. This object would be defeated if he had to show - in advance - that he had already got a good cause of action before he saw the documents."

38 At pp 459-460 James LJ said:

39 " ... ...

40 I agree that this appeal falls to be determined by the construction to be placed on s 31 of the Administration of Justice Act 1970. Emphasis in the argument has been placed on the words `On the application ... of a person who appears ... to be likely to be a party to subsequent proceedings ...' The word `likely' appears in a number of places in the section. It refers to the applicant, to the person against whom the order is sought, to the bringing of proceedings, to the possession of documents and to the issues likely to be raised. On the facts of the present matter it is to my mind quite certain that the applicant, Mrs Dunning, and the board against whom the order is sought will be parties if any proceedings are subsequently brought; and the question in this case is: is a claim for personal injuries likely to be made in subsequent proceedings?

41 ... is s 31 available to a person who may have a cause of action, but who, until discovery of documents has been made by the person intended to be sued, does not know whether he has one or not? In my judgment there is no simple unequivocal answer to the question. Section 31 is, by its terms, expressed to

provide a way of obtaining disclosure of documents, in certain circumstances and subject to certain safeguards, before the commencement of proceedings. It covers both the situation in which without sight of the documents in question the intending plaintiff may have ample evidence on which to found a claim, and also the situation in which the documents are the evidence essential to the claim or are evidence without which the claim is not so strong. I cannot conceive that the power of the court under s 31 is so restricted that it will not order discovery of documents, to a person likely to be a party against a person who is likely to be a party, on the ground that it is not likely that a claim will be made if the only basis for saying that a claim is not likely is the absence of the documents which are sought to be discovered and which will be of assistance in determining whether there exists a genuine basis for making the claim."

42 If the documents the disclosure of which was applied for confirm that the Dimitrakis was chartered by Naya to the defendant, the defendant is likely to be joined by the plaintiff as a defendant in Suit 971 of 1994. These are also documents that can be obtained by the plaintiff by serving a subpoena duces tecum on the defendant to attend and produce such documents at the hearing of the said suit against Naya.

43 The plaintiff's application was therefore within Order 24 rule 7A of our Rules of the Supreme Court. Accordingly I granted its application with costs to the defendant in complying with the order but with no order as to costs in this Originating Summons.

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Goh Joon Seng J

Koh Ching Ian for the plaintiff
Augustine Liew for the defendant

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