

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1996] SGHC 12

Suit 201/1992

Between

Singapore Flour Mills Pte Ltd

... Plaintiff

And

Thong Yik Animal Feed Sdn
Bhd
Mazlan bin Harun
Ramlan bin Haron
Bidara Holdings Sdn Bhd

... Defendant

GROUND S OF DECISION

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Suit 201/1992
G P Selvam J
25 January 1996

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Judgment:

2 This is an appeal to Judge-in-Chambers from the decision of Assistant Registrar Mr

Lawrence Quahe Cheng Ann. The Assistant Registrar dismissed three applications the

part of the first defendants seeking an order that all further proceedings in this action

against the four defendants be stayed under s 3(f) of the Civil Law Act and/or the

inherent jurisdiction of the Court and/or the ground of forum non-conveniens.

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3 The background to the action was as follows. The plaintiffs, a company incorporated in

Singapore, by this writ action claimed against Thong Yik Animal Feed Sdn Bhd (the first

defendants) and three other defendants the sum of S\$2,500,000. The other defendants are

Mazlan Bin Harun (the second defendant), Ramlan Bin Haron (the third defendant) and

Bidara Holdings Sdn Bhd (the fourth defendants). The second, third and fourth defendants

were sued as guarantors. The action was commenced pursuant to an order made in January

1992 to issue the writ and serve it in Malaysia. All the defendants were Malaysians.

4 The grounds relied on by the defendants, in summary, are as follows:

5 All the defendants were Malaysians with no assets in Singapore. (The first and fourth

defendants are Malaysian limited companies. The other two are Malaysian individuals.) It

was said that there was no evidence of the debt sued on by the plaintiffs and accordingly

it did not exist. It was also said that no serious steps were taken to recover the debt

for a considerable time. Further, the present action was not prosecuted expeditiously. The

claim therefore was a false one and accordingly the action should be stayed.

6 The second and the principal argument was this: Receivers and managers were appointed

in respect of the plaintiffs in 1988. The receivers and managers commenced an action in

Malaysia to recover the alleged debt in question from the first defendants. Thus there was

a duplicity. The plaintiffs sought leave to discontinue the Malaysian action.

7 The plaintiffs position may be summarised as follows : The plaintiffs are in Singapore.

As they are a limited company, all their documentary evidence would be in Singapore. Their

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principal witness, Datuk Ang, is a Singapore resident. The guarantee by the
second, third

and fourth defendants was executed in Singapore. The other defendants agreed
to submit to

Singapore jurisdiction. They therefore acknowledged Singapore as the proper
forum in

respect of the claim.

8 The defendants had taken the stand that the Malaysian court had no
jurisdiction in

respect of the present claim. This stand taken by the defendants prompted the
plaintiffs

to discontinue the claim in Malaysia and prosecute it in Singapore. The
defendants then

changed their mind and the plaintiffs application to discontinue the action in
Malaysia

was refused. The plaintiffs appealed and succeeded before the Malaysian High
Court. The

defendants appealed to the Malaysian Court of Appeal. At the time of the

hearing before me

the appeal had not been heard.

9 The first defendants have filed their defence and counterclaim. (At the
time I heard

the appeal the other defendants had not filed their defence but have done so
now.) This

was done after their application for an extension of time to file the defence until
after

the hearing of the Malaysian Court of Appeal was heard was refused by
Assistant Registrar

and on appeal by Judith Prakash, J.C). The plaintiffs have filed their reply and
defence

to counterclaim. The plaintiffs want an early trial.

10 The decision I dismissed the appeal on the following grounds : The debt
is old and the

action was commenced in Singapore because this Court has the basic
jurisdiction in that

the contract was made in Singapore and the breach occurred in Singapore. The

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trial is

likely to take place quite fast as the pleadings had closed. The Court in Singapore will

give early dates. Even if there is no order for an early trial, the waiting period these

days is about three months. This is very important as the plaintiffs principal witness is

an old man and his memory and health may fade if the trial does not take place in the near

future. Practically all the evidence will be in Singapore as the plaintiffs are a company

incorporated in Singapore and they are under a statutory obligation to keep records of

their transactions in Singapore.

11 The second, third and fourth defendants must have considered Singapore the proper forum

as they submitted in writing to Singapore jurisdiction. In a way this also applies to the

first defendants because of the control the other defendants have over the first.

12 At the time I heard the application the present plaintiffs had been given
leave to

discontinue the Malaysian action. In any event the defendants themselves took
the stand

that Malaysia was not the appropriate forum. The change of mind on this point,
in my view,

was to delay and obstruct an early adjudication of the claim so that they might
gain an

advantage by reason of the advanced age of the plaintiff's principal witness.

13 Dated this 25 day of January 1996.

14 G P SELVAM

15 JUDGE

G P Selvam J

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Philip Jeyaretnam for the plaintiffs/respondents
Tan Teng Muan for the defendants/appellants
