

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 115

Suit 789/97, SIC No 9328/97

Between

Trade Alliance (S) Pte Ltd

... Plaintiff

And

Sujinder Electronics (Imp &
Exp) Pte Ltd

... Defendant

GROUND OF DECISION

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**Trade Alliance (S) Pte Ltd v Sujinder Electronics (Imp & Exp)
Pte Ltd**

[1998] SGHC 115

Suit 789/97, SIC No 9328/97

Lee Seiu Kin JC

16 April 1998

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Judgment:

2 2 The Plaintiffs are a company in the business of marketing and trading

of watches, consumer electronics and general trading. They claim against the
Defendants on

a dishonoured cheque, alternatively for a debt owed in respect of goods sold and

delivered. The total amount of this debt outstanding is US\$252,192.50.

3 3 The Defendants are a company in the business of buying and selling

electronic goods. They operate out of a unit at 77 High Street #02-01, High
Street Plaza.

This is also the registered address of the company. The paid-up capital is \$200,000. The

company has 2 directors, namely, Manjit Kaur ("Manjit") and Balbir Chand ("Balbir"). However, according to Manjit, who filed an affidavit on 12 December

1997 in support of this summons, Balbir, who was her brother-in-law, was a "sleeping

shareholder" and did not participate in the affairs of the company. She deposed that

the company was actually run by her together with her husband, Tommy Lal ("Tommy"). This was not contradicted by the Plaintiffs; in fact this is corroborated in paragraph 10 of the affidavit of Prakash Rao ("Rao") filed on 22

April 1997 on behalf of the Plaintiffs. He deposed that he had never met Balbir and had

only dealt with Tommy, who was introduced to him as the Manager of the Defendants, and

with Manjit.

4 Rao's account of the facts

5 4 The circumstances giving rise to this dispute, as related by Rao, are
as follows. On 28 October 1996, Tommy and Rao agreed upon the sale by the
Plaintiffs to

the Defendants of 375 units of air-conditioners at a total cost of US\$331,788.75.
The

goods would be delivered at the port of Singapore by 9 November 1996. The
Plaintiffs would

prepare 3 Delivery Orders to enable the Defendants to take delivery of the
goods. The

Defendants was to pay US\$20,000 upon confirmation and the balance by a
cheque post-dated

to 13 November 1996. However the Defendants did not send the cheque for
US\$20,000 with the

confirmation. When Rao contacted him about this, Tommy proposed to make
out the post-dated

cheque for the full price, to which Rao agreed. On 29 October the Defendants
issued a

cheque in favour of the Plaintiffs for US\$331,788.75 post-dated to 13 November
1996.

6 5 On 13 November, the Plaintiffs deposited the cheque at their bank.

However they were informed on 14 November that it had been dishonoured
because the drawer

had instructed the bank to stop payment on the cheque. Rao deposed that he
checked with

Tommy who told him that this was because the Defendants did not have the
necessary funds

as the buyers he had lined up for the goods had cancelled their orders. He
therefore had

to find new buyers before he

7 could obtain the funds to pay the Plaintiffs. As the payment was not
made, the Plaintiffs did not release the Delivery Orders to the Defendants.

8 6 Thereafter Rao demanded payment from Tommy "on a regular

basis" and Tommy kept asking for time to make full payment, assuring him that the

Plaintiffs would be paid. Around 30 November, Tommy requested for the release of 125 units

because he had managed to sell them to certain parties. He said that the Plaintiffs would

be paid within 7 to 10 days of delivery. The cost of these was US\$110,596.25. Rao said

that he was reassured by Tommy's statements and in order to foster good relationship,

he released one Delivery Order for 125 units. On 12 December the Defendants paid the

Plaintiffs US\$79,596.25. When Rao asked Tommy about the balance, Tommy explained that he

had sold the goods to 2 parties and one of them had not paid yet. Tommy said that this

would be done shortly and assured Rao that the Defendants would pay the Plaintiffs as soon

as they received the money from the buyer. Rao continued to press Tommy for

payment of the

balance, and Tommy kept assuring him that full payment would be made.

9 7 On 20 December Tommy requested the release of the balance 250 units.

He assured Rao that the Defendants were making their best efforts to sell the 250 units

and it was likely that the Plaintiffs would receive full payment upon their sale. Based on

these assurances, Rao released the remaining units.

10 8 Between 20 December 1996 and 8 January 1997, Rao telephoned and visited Tommy regularly to press for payment of the outstanding amount. On each occasion,

Tommy or Manjit would assure him that the Defendants would pay in due course. The other

employees of the Plaintiffs also took turns to telephone Tommy and visit him to demand

payment.

forwarders.

However it only related to 125 units. So he asked Tommy to return the other
125 units.

Tommy refused and became angry. He said that the Defendants were not
obliged to return the

goods as they had already bought them, but he promised to make payment at the
earliest

time possible.

13 11 One or two days later, Tommy told Rao that the Defendants had
managed to find a buyer for the remaining 125 units. He said the Plaintiffs
would make

payment shortly. However from 21 January until 11 February, Rao visited
Tommy regularly

but could not receive any payment. Tommy kept saying that he was awaiting
payment from his

buyers. He also tried to reassure Rao by saying that he had certain debts due
from his

clients in respect of other goods sold. Those buyers had refused to accept

delivery

because the market prices had fallen and Tommy was still negotiating with them
to settle

the matters.

14 12 In view of the delays, Rao sent the Defendants a letter of demand on

6 February. On 7 February Rao visited Tommy at his office to try to persuade
him to hand

over the Defendants' stocks which the Plaintiffs would sell at market price.
Tommy

refused to do this.

15 13 On 12 February, Rao went with his employee, one Kumar, to the

warehouse where the Defendants stored their goods. He found out that the last
set of

air-conditioners was shipped out on 21 January. He was also told that the
Defendants had

no other goods of substantial value at the warehouse. Concerned about this, Rao
and Kumar

went to see Tommy immediately. Tommy again told them that the

16 Defendants were still waiting for payment from their buyers. Rao again
asked Tommy to give the Plaintiffs other goods they may have, but Tommy
flatly refused.

17 14 On 13 February Rao went to see Tommy again. Tommy told him that
he

had received news from his buyers that some money was being paid to the
Defendants and

they would be able to pay the Plaintiffs a sum of US\$150,000 on 18 February.
But when Rao

asked Tommy for a post-dated cheque for this amount he refused and insisted
that Rao

returned on 18 February to collect the cheque.

18 15 What the Plaintiffs claim happened next is found in paragraph 42 of
the affidavit of Rao filed on 22 April 1997 in support of the injunction:

19 16 On 18 February, Rao returned to the Defendants' office to

collect the cheque. To his surprise, he found the premises locked. He asked people in the

neighbouring units about Tommy and Manjit but could not find out anything. Rao went back

to the premises regularly between 19 and 25 February, but found it locked each time. He

observed that the office furniture was still there and there were some cartons inside.

However when he went on 3 March, he saw that the premises was empty. He inquired with some

of the neighbours and were told that Tommy and Manjit had been imprisoned.

20 17 Rao and Kumar checked and found that Manjit was imprisoned since
17

February. But they were unable to trace a prisoner by the name of Tommy. Since then Rao

had gone to the premises on a periodical basis and had found it locked.

21 18 The Plaintiffs filed a writ on 22 April 1997 to claim the
outstanding sum of \$252,192.50 and at the same time took out an application

for the

injunction and an order for the Defendants, through their officers, to inform the

Plaintiffs of all their assets. This was granted *ex parte* by Lim Teong Qwee, JC
on

23 April 1997. On 6 May, the Plaintiffs obtained judgment in default of
appearance. On 6

June the Plaintiffs applied for leave to obtain an order of committal against
Manjit and

Balbir for their failure to comply with the order to disclose the assets of the

Defendants. Leave was granted by Warren Khoo, J on 25 June. Subsequently
an order for

committal was made against Manjit and Balbir on 8 August 1997 by Selvam, J,
but I do not

need to go further into the details of this as it is not germane to the proceedings
before

me.

22 Manjit's account of the facts

23 19 The Defendants' application to set aside the injunction is supported by the affidavit of Manjit filed on 12 December 1997. She did not dispute

Rao's account of the facts, save in one crucial aspect, viz., the events of 17 February 1997. Manjit explained that since early 1996, she, Tommy and the Defendants had

been under investigation by the Commercial Affairs Department following a complaint by a

business associate of the Defendants. As a result of this investigation, she and Tommy

were charged in the Subordinate Court on 17 February 1997. They pleaded guilty to the

charges. She was sentenced to 6 months imprisonment while Tommy was sentenced to 16

months. She exhibited a letter signed by the Director of Prisons certifying that she was

admitted to Prison on 17 February 1997 and discharged on 18 June 1997. She said that both

she and Tommy were at the Subordinate Courts at 2.30 p.m. on 17 February
1997 in

connection with the charges. They had remained there throughout until they
were taken to

prison later in the day.

24 Contradictory Accounts of Events of 17 February 1997

25 20 I asked counsel for the parties whether it was possible that Rao was
mistaken as to the exact date of the events at the premises of the Defendants he
said had

happened on 17 February 1997. Counsel for the Defendants said that the account
in

Rao's affidavit was made with such detail and precision that there was no way
he

could have been mistaken as to the date. I would agree with him. Firstly
throughout

Rao's affidavit, wherever he was not sure of the exact date, he had said so, e.g.
he

used the phrase "on or about" or "around" before the date in, *inter*

alia, paragraphs 16, 23, 26, 28, 29, 32. In paragraph 35, he described the day as

"One or two days after 20 January 1997...". But elsewhere, he had stated the

dates with precision, e.g. paragraphs 38, 39 and 41. In paragraph 41, he deposed
that he

went to see Tommy on 13 February and was told by Tommy that the Defendants
would be able

to pay the Plaintiffs at 10.30 a.m. on 18 February. Tommy refused to give a
post-dated

cheque but told him to return on that day to collect the cheque from him.
Paragraph 42

begins with this sentence:

26 This shows that Rao was certain that it was one day before the date

that Tommy had asked him to collect the money, i.e., 18 February. I also do not
see any

possibility of the time he had given, i.e., 4 pm, being several hours off. In any
case

this was not explained by Rao in any affidavit in reply.

27 21 I see no reason to doubt the assertion by Manjit that she was in
court at 2.30 p.m. on 17 February. The Plaintiffs agree that she was imprisoned
and indeed

Rao had deposed that he subsequently found out that Manjit was imprisoned
since

28 17 February 1997. Manjit had exhibited the certificate of the Director
of Prisons in this respect. The only issue may have been whether she was there
after the
incident

29 related by Rao, i.e. after 4.00 pm. The court can take judicial notice
of the fact that proceedings in the Subordinate Courts, if they commence in the
afternoon,

normally begin at 2.30 p.m. or earlier. If the events had happened as related by
Rao, this

would mean that the proceedings was not scheduled to commence until, at the
earliest, 4.30

p.m. This is a highly remote possibility, especially given that there was a
possibility of

imprisonment.

30 22 Counsel for the Plaintiffs, Mr Choo, could not offer any explanation

except to say that the 17 February incident was not material to the decision of
the

learned Judicial Commissioner in granting the *ex parte* injunction. He submitted
that

this was only one example of many events and the main factor was the
Defendants’

constant evasion of payment. Counsel also explained that he was at a
disadvantage because

he was only given the file the previous day as the solicitor in charge was on

compassionate leave. On this point, counsel for the Defendants pointed out that
the notice

of this application was served on 17 December 1997 and that the solicitor in
charge had

ample time to check this point with the Plaintiffs.

Manjit being present in the office, he even said that she stopped Tommy from assaulting

him and Kumar.

34 Grounds for injunction

35 25 Mr Choo submitted that even if Rao had been wrong in respect of the events of 17 February, on the assumption that it was not wilful, it was not material to

the decision of the learned Judicial Commissioner to grant the *ex parte* injunction.

It becomes necessary to consider what are the facts material to that decision.

36 26 In paragraphs 49 to 52 of his affidavit, Rao gave the following reasons for believing that the Defendants will remove their assets from Singapore:

37 27 In my view sub-paragraph (i) accurately summarised the factual matrix bearing on the grant of the injunction. Essentially, Rao had portrayed the situation as one whereby he had taken Tommy at his word and fulfilled his part of the

contract, i.e. delivery of the 375 units at the port. However Tommy kept fending off

payment until he had secured buyers and payment for the goods. Rao was caught in a

situation where, on the one hand he wanted the contract to be carried out and on the other

hand he was worried about the credit-worthiness of the Defendants.

38 28 Sub-paragraph (ii) is a conclusion that is predicated upon the truth of the 17 February incident. If not for that, this situation would be no different from

the numerous commercial dealings whereby a seller has misjudged the credit-worthiness of a

buyer. While I agree that in many cases the buyer may have had no intention to pay at the

outset, the mere fact that Tommy had been promising but unable to pay does not prove that

he had no intention to do so from the start. There must be as many, if not more, cases

where the debtor had every intention to pay but was unable to do so when
payment became

due. There must be something more, and this was provided by the 17 February
incident

where, according to the Plaintiffs, Tommy and Manjit did a disappearing act
after an

encounter in which Tommy appeared upset, nervous and tense, became furious
and tried to

hit Rao and Kumar, and told them to return the following day to collect the
cheque. But in

truth, the reason they had "disappeared" was because they were imprisoned.

39 29 For the same reason, sub-paragraph (iv) is also predicated on the 17

February incident. Therefore, remove that incident and the only ground that the
Plaintiffs

have for the injunction would be that the Defendants did not pay their debts
despite

Tommy's continual assurance to Rao that they would do so.

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40 The law

41 30 The *Mareva* jurisdiction arises from section 4(8) of the Civil Law Act — see *Art Trend Ltd v. Blue Dolphin (Pte) Ltd* [1983] 1 MLJ 25. This provision states:

42 31 In determining whether an injunction should be ordered, the court will have regard to the circumstances surrounding the case before it and make such order as it deems to be just or convenient. While there is no strict requirement that must be fulfilled, the *Mareva* jurisdiction is normally involved only where there is a danger that the debtor may dissipate his assets or put it out of reach of the creditor. In

Mareva Compania Naviera SA v. International Bulk Carriers SA [1980] 1 All ER 213,

Lord Denning MR, said, at p 215b:

43 32 It is necessary to state grounds for the belief that there is a risk

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of dissipation - see *Chan Choy Keen Collin v. PUB* [1997] 1 SLR 604, in which the

Court of Appeal stated at p 611F:

44 33 The *Mareva* jurisdiction is not intended for the purpose of improving the position of a claimant in an insolvency - see *Bekhor & Co. v. Bilton*

[1981] 1 Q.B. 923. Business people routinely make decisions as to the risks involved in

any undertaking. Credit is given or not given according to a party's assessment of

the standing of the other side. If this judgment is wrong, then the creditor has recourse

to the law - he can obtain judgment against the debtor and enforce it. Failure to pay,

even if it is persistent, does not entitle the creditor to invoke the *Mareva* jurisdiction. There must be evidence that the defendant is about to or there is a real

risk that that he may dissipate his assets. The courts have sometimes taken a

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broad

approach as to what constitutes such risk. Thus in *Third Chandris v Unimarine*

[1979] 2 All ER 972 at p 984, the English Court of Appeal held that a company registered

in a safe haven could be presumed to carry a real risk of dissipation of assets if it did

not pay its debts. In *Amixco Asia Pte Ltd v Bank Negara Indonesia 1946* [1992] 1 SLR 703, the Court of Appeal found a real likelihood that the defendant company would

dissipate its assets from a pattern of dishonest conduct on the part of some of the

defendants.

45 34 In the present case, the crime committed by Manjit and Tommy does

not appear to be related to the transaction in dispute. Neither do the Plaintiffs allege

that it is. There is therefore no pattern of dishonest conduct from which it can be

inferred that the Defendants would be likely to dissipate their assets.

46 Contempt of Court

47 35 The Plaintiffs submit that the Defendants, through their officers,
i.e. Manjit, are in contempt of court by Manjit's failure to comply with
paragraph 2

of the *ex parte* Order of Court of 23 April 1997 requiring the Defendants to
disclose their assets. After several attempts at personal service this order was
served by

way of substituted service, through advertisement in the Straits Times and
posting at the

notice board of the Supreme Court. The advertisement was published on 4
August. I should

add that on 8 and 11 July, the order was served personally on, respectively,
Balbir and

Goh Ho Lye, a secretary of the Defendants. On 8 August the Plaintiffs applied
for and

obtained an order of committal against Manjit and Balbir. According to Manjit,
she was

imprisoned from 17 February to 18 June. Tommy was not due to be released

until 7 January

1998. As Balbir was not involved in the affairs of the company, there was nobody to run

the company during their incarceration. She said that the injunction was served on her

while she was in prison. Apart from the fact that it was impossible to do anything from

prison, she was also totally depressed at the time. Since her release, she had found it

impossible to obtain in time the information required because the documents were in a

mess. This was because the Commercial Affairs Department had seized all documents of the

Defendants and upon their return they were in a "total mess". Also, Tommy was

not available to assist her in unravelling the documents.

48 36 Those contempt proceedings are not before me and they have been

adjourned pending the disposition of this appeal. What concerns me is whether I should

refuse to act at the instance of the Defendants in the circumstances. Counsel for
the

Plaintiffs contend that where a contemnor had not been purged of his contempt,
the court

must refuse any application on his instance until he is purged of his contempt.
Counsel

cited *Young v Jackman* (1986) 7 NSWLR 97, where Young, J, analysed the
authorities

on the subject and concluded that the court had no discretion to hear a contemnor
until he

is purged of his contempt. Whatever be the state of the law at that time, the
Court of

Appeal in *Lee Kuan Yew v Tang Liang Hong & Anor* [1997] 3 SLR 489 has
since

pronounced on this matter and has declared that there is such a discretion. The
Court of

Appeal cited with approval the judgment of Lord Bridge in *X Ltd v Morgan
Grampian*

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(Publishers) Ltd [1991] 1 AC 1 at p.46 where His Lordship said that a more flexible

approach "*better accords with contemporary judicial attitudes to the importance of*

ensuring procedural justice". Lord Oliver said, at p.51, that one instance where

a court would hear a contemnor would be as follows:

49 37 The circumstances of the present case clearly require the court to

hear the contemnor's application. The Defendants are in contempt of an order of court

which, on the view that I have taken, the Plaintiffs were not entitled to obtain.

Furthermore, I am satisfied by the explanation given by Manjit as to why the Defendants

were not able to comply with the disclosure order.

50 Conclusion

51 38 Accordingly, I found that the Plaintiffs have not made out a case

that there was a risk that the Defendants would dissipate their assets so as to frustrate

any judgment obtained against them. This was because, on the evidence before
me, I found

that the crucial element of the Plaintiff's grounds, ie, the incident of 17 February

1997, could not have occurred. Therefore the order of court made on 22 April
1997 must be

discharged.

52 Lee Siu Kin

53 JUDICIAL COMMISSIONER

54 Singapore

Lee Siu Kin JC

Chen Chuen Tat (Chen Lee & Partners) for the defendants
Ronald Choo (Allen & Gledhill) for the plaintiffs
