Thyssen Hunnebeck Singapore Pte Ltd v TTJ Civil Engineering Pte Ltd
[2002] SGHC 247

Case Number : Suit No 766 of 2001, RA No 259 of 2002

Decision Date : 21 October 2002

Tribunal/Court : High Court

Coram : Choo Han Teck JC

Counsel Name(s) : Mark Lim (Wong & Leow LLC) for the plaintiffs; Christopher Goh (Ang & Partners) for the defendants

Parties : —

Civil Procedure – Discovery of documents – Test for relevancy

Judgment

GROUNDS OF DECISION

1. This was an appeal against an assistant registrar's decision refusing the plaintiff's application for discovery of various documents. The defendants were at all material times a scaffolding sub-contractor who were involved in a major building project, namely a depot for the Mass Rapid Transport system's North-East line. Hyundai Engineering And Construction Ltd were the main contractors. The plaintiffs were suppliers of scaffoldings who contracted to supply the defendants with scaffoldings.

2. The plaintiffs supplied scaffoldings pursuant to their contract with the defendants. There is no dispute concerning this supply. However, by virtue of cl 2.3 of the contract, the plaintiffs were obliged to supply further quantities at no cost to the defendants if a request was made by them under the clause in question. Clause 2.3 sets out as follows:

> "The Buyer and Seller have agreed to the supply of additional formwork equipment [the scaffolding] on loan without rental charges (refer to On Loan Terms and Conditions Appendix E) in the event acceleration of the project is required with the Buyer giving the Seller four weeks advance written delivery notice. For the additional formwork coverage, the Seller will supply the standard equipment (refer to Appendix B, C and D) and other equipment i.e. plywood (for decking only) to be supplied by the Buyer."

One of the issues in dispute between the parties is whether the defendants were obliged to pay for the additional scaffolding. The plaintiffs aver that their invoices for the additional scaffoldings had been used as the basis upon which the defendants made a claim from the main contractors. It is not relevant to consider the merits of the claim and defence as that was not in issue here or below, save that Mr. Goh, counsel for the defendants, argued that the documents sought to be discovered have nothing to do with the claim. He submitted that the documents, including invoices between the sub-contractor (plaintiffs) and the main contractors are irrelevant to the trial.

3. Mr. Lim, counsel for the plaintiffs submitted that there are three reasons why the documents sought are relevant. First, he says that the correspondence and invoices may shed light as to whether the request for additional formwork was indeed made pursuant to cl 2.3. It will be recalled

that under that clause, the request appears to be predicated on the basis that work was accelerated. Whether that is indeed so is, of course, a matter for the trial judge to decide, but at this stage, it seems to me that the documents may have some connection with the issue.

4. Secondly, Mr. Lim submitted that if the documents and invoices reveal that the defendants had claimed against the main contractors for the formwork then they may be estopped from denying that plaintiffs are entitled to be paid for supplying the scaffolding. This argument is premised on the event that cl 2.3 does not apply and that the defendants are liable to pay on other grounds. I am not persuaded by any argument at the moment that this ground is entirely lacking in merit. The test I apply is whether the documents requested may contain information relevant to the plaintiffs' case. In my view, I think they do.

5. Thirdly, Mr. Lim submitted that the plaintiffs have an alternative claim in *quantum meruit*. The documents requested may contain information to show that the defendants had received a benefit in circumstances that it would be unjust for them to retain that benefit without paying the plaintiffs. The documents sought are documents in connection with the work done by the defendants for the main contractor for which the formwork was provided by the plaintiffs. In a case such as this where the contract between the plaintiffs and the defendants is virtually a back-to-back contract in part, if not wholly so, with a third party, and evidence necessary to support the plaintiffs' case may reasonably be found in documents passing between the defendants and the third party, then those documents are discoverable. I accept that in some cases the line between a reasonable possibility of finding such information and a fishing expedition is a fine one. Hence, it case must be considered on its own merits. It will be borne in mind that should it subsequently transpire that no relevant information was in fact found in the documents disclosed does not, in itself, mean that the request was a fishing expedition - a term that used to serve well, but has recently been showing signs of abuse. It must be remembered that the right and entitlement of the party concerned is to know and inspect the documents in the hands of the other. The relevancy of the connection of the documents to the claim, is a broader form of relevancy than the relevancy of documents for the purposes of admitting them into evidence at trial. If that is thought to be a "fishing expedition" then it is time to examine more closely what that term means.

6. In my view, I would hold that a "fishing expedition" in the context of discovery refers to the aimless trawling of an unlimited sea. Where, on the other hand, the party concerned knows a specific and identifiable spot into which he wishes to drop a line (or two), I would not regard that as a "fishing expedition". But I would myself prefer to approach such applications strictly on the basis of the broader relevancy test. That has the advantage of training one's focus directly on the matter at hand, and avoiding the distractions inherent in analogies - even one that has become a term of art, the "fishing expedition", for example. My use of the phrase "broader relevancy test" probably requires no explanation in the context so far. However, some explanation is necessary to avoid any confusion by reason of the Court of Appeal judgment in *Tan Chin Seng v Raffles Town Club Pte Ltd* [2002] 2 SLR 345, 350 which counsel for the defendants, Mr. Goh relied on in his effort to persuade me that documents are no longer discoverable unless they are shown to be relevant in relation to the pleadings.

7 . *Tan Chin Seng* is an important case because it restricts the full ambit of the position enunciated by Brett LJ in *Compagnie Financiere et Commerciale du Pacifique v Peruvian Guano Co* (1882) 11 QB 55, 62 which was to become the classic exposition of the old rules of court when it held that a document is relevant and discoverable if it will enable the party seeking discovery to either advance his own case or damage that of his adversary. Brett LJ then went on to say that a document would be discoverable in this sense "if it is a document which may fairly lead him to a train of inquiry, which may have either of these two consequences". In *Tan Chin Seng* the Court of Appeal

approved the proposition (in Pinsler's Supreme Court Practice) that 'a document is no longer discoverable merely because there is some connection (irrespective of the nature of the link) between it and the issue in the case'. The Court, however, issued the reminder that although discovery under the concept of "train of inquiry" is no longer applicable under a general discovery order, it is still applicable where discovery for specific documents under O 24 r 5 are concerned. What is a specific document within the meaning of this rule is a question of fact. In some cases, it is conceivable that a request for "all the documents relating to this project" may be regarded as sufficiently specific although in most cases it would not. Conversely, it is conceivable that in some cases, a request for "all the invoices relating to this project" may be sufficiently specific and in some cases, not so. The judgment in *Tan Chin Seng* concluded on the law relating to discovery with the statement that cases decided under the previous rules are not necessarily inapplicable. One of the essential conditions to warrant an order for discovery is still the proof of relevancy. The rest of the judgment dealt with the facts of that case.

8. For the above reasons I allowed the plaintiffs' appeal and granted an order for discovery of the documents relating to the scaffolding contract between the main contractor and the defendants, including all invoices pertaining to it. However, I disallowed the application for discovery of documents between the defendants and the main contractor's related company.

Sgd:

Choo Han Teck

Judicial Commissioner

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