Keppel Tatlee Bank Limited v Bandung Shipping Pte Ltd
[2002] SGHC 47

Case Number	: Adm 600151/2001, RA 600177/2001
Decision Date	: 09 March 2002
Tribunal/Court	: High Court
Coram	: Lee Seiu Kin JC
Counsel Name(s)	: Ajaib Haridass and Thomas Tan (Haridass Ho & Partners) for the plaintiffs-appellants; Toh Kian Sing and Ung Tze Yang (Rajah & Tann) for the defendants-respondents
Parties	: Keppel Tatlee Bank Limited — Bandung Shipping Pte Ltd

Judgment

GROUNDS OF DECISION

1 This is an appeal against the decision of the Deputy Registrar in SIC 602020/2001 in which the Defendants applied under O 18, r 19 or the inherent jurisdiction of the Court to strike out the Plaintiffs' claim. On 17 October 2001 the Deputy Registrar had allowed the application and ordered the claim struck out. He also ordered costs of the action, fixed at $18,000, to be paid by the Plaintiffs to the Defendants.

2 The appeal was heard on 28 January 2002 at the end of which I allowed the appeal against the claim being struck out, but instead ordered certain parts of the statement of claim to be struck out. I also set aside the order for costs below and awarded the Plaintiffs costs of the appeal and the hearing below. In their notice of appeal filed on 25 February, the Defendants stated that they were appealing against part of my decision, as follows:

> 1. The reinstatement of the action in Admiralty in Personam No. 600151 of 2001 which was struck out by the Learned Deputy Registrar below, insofar as it relates to the causes of action based no breaches of 2 contracts of carriage contained in and/or evidenced by Bills of Lading Nos. SIN(BEL)/KNL-15 and SIN(BEL)/KNL-16 both dated 13 April 2000, as pleaded in the Statement of Claim filed in the said action; and
>
> 2. Setting aside the order for costs below.

I now give my grounds of decision.

3 Order 18, r 19 provides as follows:

> 19. —(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement of any writ in the action, or anything in any pleading or in the endorsement, on the ground that —
>
> (a) it discloses no reasonable cause of action or defence, as the case may be;
>
> (b) it is scandalous, frivolous or vexatious;
>
> (c) it may prejudice, embarrass or delay the fair trial of the

action; or

(d) it is otherwise an abuse of the process of the Court,

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under paragraph (1)(a).

(3) This Rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading.

4 The Defendants' SIC recited that the claim (a) discloses no reasonable cause of action; and/or (b) it is scandalous, frivolous or vexatious; and/or (c) it may prejudice, embarrass or delay the fair trial of the action; and/or (d) it is an abuse of the process of the Court. It is supported by the affidavit, filed on 31 August 2001, of one Yong Por Kwong ("Yong"), the Insurance/Claims Manager of Samta Shipmanagement Ptd Ltd who are the managers of the Defendants. In reply, the Plaintiffs have filed two affidavits, the first by Teo Weng Kee ("Teo") on 8 October and the second by S. Pattabiraman on 23 November 2001.

Ground (a) – no reasonable cause of action disclosed

5 (2) of O 18, r 19 expressly provides that no evidence shall be admissible on an application under (1)(a). The Defendant must show that no cause of action is disclosed on the face of the pleadings. I had earlier explained that I had allowed the Defendants' application in part and struck out some parts of the Statement of Claim. After removing the parts struck out, the Statement of Claim (apart from the prayers) would read as follows:

"1. The Plaintiffs are a company incorporated in Singapore and carry on business as bankers.

2. The Defendants are and were at all material times the owners of the "Victoria Cob" of the port of Singapore.

3. By a contract of carriage contained in and or evidenced by the undermentioned Bills of Lading (the "Bills of Lading"), the Defendants agreed to ship and carry a total of 508.312 metric tons of Crude Palm Oil (the "Cargo") on board the vessel "Victoria Cob" from Belawan, Indonesia, for carriage to and delivery at Kandla, India.

Bills of Lading Nos.	Date	Quantity
SIN(BEL)/KNL-15	13 April 2000	254.156 MT
SIN(BEL)/KNL-16	13 April 2000	254.156 MT

4. The Defendants were the issuers of the Bills of Lading and carriers thereunder.

5. The Plaintiffs were at all material times the owners of the Cargo and or lawful holders or indorsees of the said Bills of Lading, and or persons entitled to immediate possession of the said Cargo.

6. As issuers of the Bills of Lading and carriers thereunder, and or as bailees for

reward, the Defendants were required to take reasonable care of the Cargo and to deliver the Cargo at Kandla to any person(s) who holds and presents the original Bills of Lading and or against production of the original Bills of Lading.

7. In breach of contract or in breach of their duty as bailees, the Defendants failed to take reasonable care of the Cargo and to deliver the Cargo to the Plaintiffs against the presentation and or production of the original Bills of Lading and instead delivered the Cargo to person(s) who did not hold and or present and or have possession of the said original Bills of Lading.

9. By reason of the Defendants' breach of contract and or duty as aforesaid, the Plaintiffs have suffered loss and damage.

PARTICULARS OF LOSS AND DAMAGE

a) Invoice price to Lanyard Foods Ltd (US$365 PMT x 508.312 MT) US$185,533.88

b) Loss of interest at 9.5% per annum from the date of loss until judgment or payment."

6 The Plaintiffs also filed Further and Better Particulars of the Statement of Claim on 29 May 2001. The relevant particulars could be summarised as follows:

(a) The party from which the Plaintiffs derived title so as to become owners of the Cargo was Ranchhoddas Purshottam Holdings Pte Ltd ("RPH").

(b) The contract pursuant to which the Plaintiffs derived title to the Cargo was in writing and contained in the following documents: (i) Joint-Credit Facilities letter from the Plaintiffs to RPH dated 18 August 1999; (ii) the acceptance by RPH dated 24 August 1999; and (iii) the application by RPH to the Plaintiffs for collection/purchase/negotiation on 25 May 2000.

(c) The full circumstances under which the Plaintiffs became lawful holders of the Bills of Lading are as follows: RPH submitted the application for collection/purchase/negotiation together with the documents (i.e. bills of lading, commercial invoices, etc.) and the Plaintiffs subsequently purchased the said documents and made payment of US$185,533.88 to RPH by crediting the said sum to their account with the Plaintiffs on 25 May 2000, at which date the Plaintiffs would be entitled to immediate possession of the Cargo from the Defendants.

7 The Plaintiffs did not provide particulars to, *inter alia*, the following two questions in respect of 5 of the Statement of Claim:

"(d) Identify the party who allegedly endorsed the Bills of Lading to the Plaintiffs and the date of such alleged endorsement.

(e) State the full circumstances including date and time under which the Bills of Lading were allegedly endorsed to the Plaintiffs"

The Defendants obtained an order of court to compel the Plaintiffs to provide replies to those particulars requested. In compliance with that order, the Plaintiffs filed the following answers on 11 July 2001:

> "(d) The Plaintiffs are not relying on endorsement to prove their title to sue.
>
> (e) See answer to (d)."

8 That was the status of the Plaintiffs' pleadings on 31 August 2001 when the Defendants filed the application to strike out the claim. The three affidavits filed by the parties in relation to this matter have no relevance under ground (a) and the Defendants can look only to the pleadings to show that there is no reasonable cause of action disclosed therein. Although the Defendants appear to be relying on their affidavit in respect of this ground, they cannot do so as it is expressly stated in O 18 r 19(2) that no evidence shall be admissible on an application under paragraph (1)(a). This position has been affirmed by the Court of Appeal in *Gabriel Peter & Partners v Wee Chong Jin & Ors* [1998] 1 SLR 374, at 19:

> 19 In their application for striking out, the respondents relied on O.18, r.19(1)(a) as the ground in support of their application – that the writ of summons and statement of claim disclosed no reasonable cause of action. According to O.18, r.19(2), no evidence shall be admissible on an application under O.18, r.19(1)(a). The only exception to this prohibition against adducing evidence is where there is an affidavit filed in support of the originating summons.

The exception referred to in the last sentence relates to matters begun by originating summons for which provision is made in O 18, r 19(3) and has no application in a matter begun by writ, as is the present case.

9 Accordingly, the determination of the application under this ground must rest solely on the pleadings. The cause of action is fully pleaded in the Statement of Claim as clarified by the Further and Better Particulars filed on 29 May and 11 July 2001. The Plaintiffs have pleaded the contract, as evidenced by the two Bills of Lading which the Plaintiffs had purchased from RPH. They had pleaded the Defendants' breaches by their failure to deliver the cargoes against presentation of the bills. The Plaintiffs have also pleaded that they had suffered damages as a consequence of those breaches. In the circumstances, the Defendants' application under ground (a) must fail.

Grounds (b), (c) and (d)

10 In the affidavit filed by Yong on behalf of the Defendants, he said that he had no personal knowledge of the material facts. His evidence in that respect was based on his interpretation of the Bills of Lading and other documents obtained in discovery. Yong pointed out that the shippers had endorsed the bills in blank and delivered them to RPH. RPH then on-sold the cargos to Lanyard Foods Ltd. Subsequently RPH delivered the bills to the Plaintiffs for collection/purchase/negotiation, without filling in any name to the endorsement and it was still in blank. The Plaintiffs later filled in the name of the State Bank of Saurashtra in India ("State Bank") and delivered the bills to them, for collection by Lanyard Foods Ltd. However the bills were subsequently returned to the Plaintiffs with the word "CANCELLED" stamped over the endorsements to the State Bank. There were no endorsements on both bills by the State Bank to the Plaintiffs. Yong concluded that the Plaintiffs were not the endorsees of the Bills of Lading, which he said was consistent with the assertion in the Plaintiffs' further particulars that they were not relying on the endorsements to prove their title to sue. Yong

said that in view of this, he was advised and believed that the Plaintiffs were not the lawful holders of the Bills of Lading within the meaning of the Bills of Lading Act.

11 Counsel for the Defendants submitted that the Plaintiffs was not the holder of the bills because they had been endorsed to the State Bank but the latter had not endorsed them to the Plaintiffs when they were sent back to Singapore. Accordingly, the Plaintiffs did not fall within the definition of "Holder of a Bill of Lading" under s 5(2)(b) of the Bills of Lading Act ("the Act"). Therefore the Plaintiffs had no rights under the bills and their action must fail.

12 In the reply affidavit filed by Teo on behalf of the Plaintiffs, he clarified that the Plaintiffs purchased the bills in May 2000 pursuant to a Joint Credit Facility granted to RPH and their sister company Intermetallco Pte Ltd. The Plaintiffs had credited into the account of RPH the sum of US$185,274.39 as payment. When the Plaintiffs obtained the bills, they were already endorsed in blank by the shipper. Thus those bills came into the Plaintiffs' possession as bearer documents. Subsequently the Plaintiffs tendered the shipping documents to the State Bank, the bankers of Lanyard Foods Ltd to whom RPH had sold the cargo, to collect payment. To protect the Plaintiffs in the event that the bills were lost in transit, the bills were endorsed to the State Bank. Teo said that in the normal course of events, payment would have been received within 30 days. However no payment was received from the State Bank on behalf of Lanyard Foods Ltd and on 10 October 2000 the Plaintiffs requested the State Bank to return the bills. This was done on November 2000. After receipt the Plaintiffs stamped "CANCELLED" over the endorsements in the bills to the State Bank.

13 Counsel for the Plaintiffs firstly submitted that the Plaintiffs' cause of action had been made out on the pleadings and the Defendants could not rely on the affidavits as a basis for striking out the action. Notwithstanding this, he submitted that the Plaintiffs had an argument to the Defendants' case that the Plaintiffs were not the holder of the bills. He submitted that this was a bill endorsed in blank by the shipper and the endorsee's name (the State Bank) had been filled in by the Plaintiffs for collection by the State Bank. When the purchaser did not make payment the State Bank returned the bills to the Plaintiffs who promptly cancelled the specific endorsement they had made. He submitted that the cancellation had the effect of nullifying the original endorsement. He also submitted that s 5(2)(b) of the Act was not to be interpreted in the manner that the Defendants' counsel had suggested.

14 I can only conclude that there is a question of law that is not altogether clear that has to be decided in order to determine whether the Plaintiffs should succeed in their claim. That appears to be the only ground for this application. Otherwise there is nothing in the affidavits setting out any reason for characterising the Plaintiffs' claim as scandalous, frivolous or vexatious, or for believing that it would prejudice, embarrass or delay the fair trial of the action, or that it is otherwise an abuse of the process of court.

15 In a determination under ground (a), the court will only look at the pleadings and decide whether there is a cause of action. The court will not embark on a detailed inquiry into the documents and facts of the case. In *Gabriel Peter & Partners v Wee Chong Jin & Ors*, the Court of Appeal said at 18:

> 18 In general, it is only in plain and obvious cases that the power of striking out should be invoked. This was the view taken by Lindley MR in *Hubbuck & Sons v Wilkinson, Heywood and Clark* [1899] 1 QB 86 at p 91. It should not be exercised by a minute and protracted examination of the documents and facts of the case in order to see if the plaintiff really has a cause of action. The practice of the courts has been that, where an application for striking out involves a lengthy and serious argument, the court should decline to proceed with the argument

> unless, not only does it have doubts as to the soundness of the pleading but, in addition, it is satisfied that striking out will obviate the necessity for a trial or reduce the burden of preparing for a trial.

16 Having failed under ground (a), what the Defendants appear to be doing is to show by the very same minute and protracted examination of the documents and facts that the Court of Appeal had referred to in *Gabriel Peter's* case, that the Plaintiffs' case is hopeless and therefore it falls within grounds (b), (c) and (d). In my view the Defendants are not entitled to do that for two reasons. Firstly, this would permit them to get around the prohibition against evidence in ground (a). Secondly, I cannot see how where there is a bona fide dispute as to the law, the claim can be considered scandalous, frivolous, vexatious, or would prejudice, embarrass or delay the fair trial or would be an abuse of court.

17 In view of this, the Defendants' application to strike out the claim must fail. It appears to me that if what they seek is a preliminary determination on a point of law, the appropriate application would be one under O 14, r 12.

Sgd:

LEE SIU KIN
JUDICIAL COMMISSIONER

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