

Lim Yee Ming v Ubin Lagoon Resort Pte Ltd and Others
[2003] SGHC 222

Case Number : Suit 1368/2001/A, RA 285/2003/L

Decision Date : 26 September 2003

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean J

Counsel Name(s) : Matthew Saw (Lee & Lee) for the appellant/plaintiff; Brian Tan (Madhavan Partnership) for 1st respondents/1st defendants

Parties : Lim Yee Ming — Ubin Lagoon Resort Pte Ltd; Adventure Training Systems (Asia-Pacific) Pte Ltd; Adventure Training Systems Pty Ltd

Civil Procedure – Judgments and orders – Application for stay of execution pending appeal against judgment – Whether special circumstances existing to justify grant of stay

1 This is the Plaintiff's appeal against the decision of the Assistant Registrar granting a stay of execution pending the 1st Defendant's appeal to the Court of Appeal. I upheld the Assistant Registrar's decision on 27 August 2003. I now give my reasons for dismissing the Plaintiff's appeal.

2 The 1st Defendant, Ubin Lagoon Resort Pte Ltd, is a Singapore company operating Ubin Adventure Centre at Pulau Ubin. The 1st Defendant conducts adventure and recreational activities and had contracted with the 2nd Defendant, a Singapore company, to set up the Ubin Adventure Centre, supply relevant equipment and train the 1st Defendant's personnel. The 2nd Defendant in turn contracted with the 3rd Defendant, an Australian company, to supply equipment to Ubin Adventure Centre and to train the 1st Defendant's personnel.

3 The Plaintiff was seriously injured at Ubin Adventure Centre. Whilst she was being lowered to the ground from the top of a 24m-high tower, she suddenly dropped from a height of approximately 8 to 10 meters. She fell heavily to the ground and is now paralysed from the waist down.

4 After a 4-day trial before Justice Lai Kew Chai, the Defendants were found jointly and severally liable to the Plaintiff. The Defendants were ordered to pay the Plaintiff damages in the sum of \$1.65 million. Damages for three other heads of claim were ordered to be assessed by the Registrar. On 21 July 2003, the 1st Defendant filed Notice of Appeal to the Court of Appeal on liability. The 2nd and 3rd Defendants lodged no appeal.

5 A stay application of this nature involves the interplay of two principles. There is the principle that a successful litigant ought not to be deprived of the fruits of his victory. The other principle is that when a party is exercising his undoubted right of appeal, his appeal should not be rendered nugatory, if successful. A court would in the exercise of its discretion grant a stay of execution pending appeal where the special circumstances of the case so require. See *Lee Kuan Yew v Jeyaretnam* [1990] SLR 740.

6 An instance of a special circumstance justifying a stay of execution is where the judgment creditor may be unable to return the monies. There was in my view a real and genuine risk of that eventuality, which would render a successful appeal nugatory. It is to be remembered that the restoration of monies paid over under a judgment is founded on the principles of restitution and the return of such monies is with interest: *Singapore Airlines Ltd & Malaysian Airlines System Berhad v Fujitsu Microelectronics (Malaysia) Sdn Bhd* [2001] 1 SLR 532.

7 It was clear from the Plaintiff's own evidence that she would probably not be in a position financially to return the monies if the Court of Appeal reverses the decision against the 1st Defendant. In this case the Plaintiff's financial straits was admitted. The monies are required to meet her medical and other expenses. The Plaintiff, who is an orphan and unemployed since her accident, has had to depend on the financial assistance of relatives, friends and her former employers. It was not suggested that the generosity and financial support of her relatives, friends and former employers had ceased. It would not be unreasonable in the circumstances to infer that they would continue to see her through the next few months until the appeal is disposed of. At the time the matter was heard by me, the 1st Defendant's appeal was scheduled for hearing in the week beginning 13 November 2003.

8 As to whether there was a likelihood of the assets of the losing party being diminished either deliberately or by sheer force of circumstances by the time the appeal is disposed (see *Tokuhon (Private) Limited v Seow Kang Hong (no.2), High Court, unreported*), I thought it was a consideration that I need not have to concern myself with. The 1st Defendant was covered by liability insurance and it was not disputed that it would be its insurers who would satisfy the judgment against the 1st Defendant. Thus, the usual concerns that a judgment creditor may become insolvent before disposal of the appeal did not arise here. Of relevance is the fact that the Judgment carries post-judgment interest of 6% p.a. and the insurers who have the conduct of the defence (and now the appeal) would have to pay for this if the appeal is dismissed.

9 I accepted the 1st Defendant's contention that as the liability of the Defendants were held to be joint and several, there is recourse available to the Plaintiff to enforce her judgment against the other two judgment creditors who had not appealed. The point is that the Plaintiff has not been denied the judgment she had obtained against the 2nd and 3rd Defendants and the 1st Defendant's appeal had not affected her right in any way. It was her prerogative to decide against which particular judgment debtor to go after. But in considering the application before me, the fact that there were other judgment debtors is a factor that I was entitled to take into account to see if special circumstances justifying a grant of stay of execution existed.

10 The Plaintiff had served a statutory demand on the 1st Defendant and threatened to proceed to wind up the 1st Defendant if the statutory demand was not met. If proceeded with, it might render the appeal nugatory.

11 For an application of this kind, the 1st Defendant needed only to satisfy me that the appeal is not devoid of merits. Counsel for the 1st Defendant submitted that as the trial Judge had held the 3rd Defendant entirely to blame for the incident, he ought to have found the 1st Defendant to be free of blame. Alternatively, liability ought to be apportioned. It was thus wrong to have found the 1st Defendant jointly and severally liability to the Plaintiff. Counsel for the 1st Defendant further submitted that the trial Judge did not mention extra hazardous activities so as to render the 1st Defendant liable for the act of an independent contractor. On vicarious liability, there was none as the trial Judge had found the 1st Defendant's employee blameless. Counsel for the Plaintiff disagreed with the 1st Defendant. He said the 1st Defendant owed the Plaintiff a duty to ensure that its employee was properly trained. In my view, the appeal was not devoid of merits. One question for the appeal would be whether the Defendants had acted independently in a wrongful manner and thereby caused the same indivisible damage to the Plaintiff.

12 To conclude, in my view there were in this case factors that constituted special circumstances to justify an order for stay. Accordingly, I dismissed the appeal. I made no order on costs as Counsel for 1st Defendant informed me that he was not asking for costs of the appeal.

Copyright © Government of Singapore.