Sumio Sakata and Others v Fuminori Paul Naruse and Others
[2004] SGHC 102

Case Number : Suit 401/2003, RA 61/2004

Decision Date : 14 May 2004

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Edmund Kronenburg and Adrian Ng (Tan Peng Chin LLC) for second and fourth plaintiffs; Ronald Choo (Rajah and Tann) for first and third plaintiffs; Tan Kok Quan SC and Audrey Thng (Tan Kok Quan Partnership) for second defendant; Suresh Nair (Allen and Gledhill) for first, third, fourth and 11th defendants

Parties : Sumio Sakata; Mikio Shiga; KK SPJC and Company, Tokyo; Netlock Technologies Japan KK — Fuminori Paul Naruse; Suzanne Liau; SK Partners Pte Ltd; SPJC Enterprise; Yuenming Ltd; SPJC & Co USA; SPJC Singapore Pte Ltd (in liquidation); Netlock Tecnologies Asia Pte Ltd (in liquidation); Netlock Holdings Pte Ltd (in liquidation); Pyramix Consulting & Investments Co Pte Ltd; Chew Chung Huang; Chan Siew Po Jennifer; Elfron International Ltd; Think Masters & Assoc Pte Ltd; Aspentrees Pte Ltd (in liquidation)

Civil Procedure – Interim orders – Security for costs – Variation of security of costs order upon change of solicitors – Whether appellate interference with exercise of discretion warranted – Whether the provision of a further sum as security necessary – Whether apportionment from original sum adequate.

14 May 2004

Choo Han Teck J:

1 This was an appeal by the plaintiffs against an order by the assistant registrar that the security for costs ordered against them in the sum of $375,000 be varied. The second defendant was initially represented by the same solicitors as the other defendants. She changed solicitors after the orders for the provision of security for costs had been made. The amount ordered was to cover costs up to trial.

2 When the second defendant changed solicitors she applied for a variation of the orders and was granted an order for $20,000 in her favour to be apportioned from the original sum of $375,000. In addition to that, a further sum of $300,000 was ordered to be provided for her benefit.

3 The second defendant regarded herself as a "major player" and submitted that even the plaintiffs' solicitors admitted as much. Her counsel submitted that she had to change solicitors because it appeared that there might be conflict of interests between herself and the first defendant. She had taken a long time to appreciate this potential complication.

4 An order for security for costs in the case of a foreign plaintiff is made so that a successful defendant will be spared the agony of pursuing his adversary for costs in an unfamiliar jurisdiction. In principle, therefore, the defendant should face his foreign opponent in the same circumstances as he faces a local one. But it is a principle that requires a great deal of adjustments because of variety and uncertainty in each case. The application of this ostensibly simple principle of law to an imponderable variety of circumstances is, therefore, by necessity, left to the exercise of the court's discretion. Orders so made should not be disturbed on appeal because discretion must be given a wide berth. In exceptional circumstances, however, interference in the orders might be warranted, as in this case.

5 This is an action commenced by the four Japanese plaintiffs against the 16 defendants. The first and second defendants are the principal defendants. The others are either nominees or corporate vehicles allegedly used by the first and second defendants. The claims are substantial. Some of them have not yet been quantified, but the dozen or so that have been, exceeded $30,000,000. The claims were based on breaches of fiduciary duty and conspiracy to defraud. The background of this dispute between the parties as set out in the lengthy statement of claim was that the first and second plaintiffs were misled into investing money in companies pursuant to representations by the first and/or second defendants that those companies held valuable technologies that had attracted interested purchasers including Lucent Technologies. Consequently, companies were incorporated in Japan and elsewhere, and loans were procured from or through the first and second plaintiffs, to meet the arrangements proposed by the first and second defendants.

6 On 4 July 2003 a sum of $75,000 as security for costs was ordered against the plaintiffs in favour of the first, second, third, fourth, sixth, and 11th defendants represented by M/s Allen & Gledhill. The pleadings in this action closed in October, and on 10 October 2003 a further sum of $300,000 was ordered as additional security to cover the defendants (represented by Allen & Gledhill) up to trial. Then on 5 December 2003, the second defendant changed solicitors on the ground that there might be a conflict of interest for Allen & Gledhill to represent her as well as the first defendant. That was probably a wise and correct move; but the second defendant is an experienced lawyer and was fully aware of the facts, history, and allegations in this case and ought, therefore, have taken this into account much earlier. The late change of solicitors had some consequence to the matter of security for costs. Each defendant needs to be covered for his or her costs, but had the parties appeared before the registrar after the change of solicitors had taken place, the roles of the respective defendants, and correspondingly their solicitors, could be evaluated and the question of security to be ordered and apportioned could then be considered on a more complete and comprehensive scale. Furthermore, counsel said that the trial would be a lengthy one. The issues of fact and law are also likely to be complicated. Hence, in such circumstances, the order for security for costs up to trial should not be too greatly disturbed. By the time the second defendant asked for separate cover, pleadings had closed. There might be more applications to be made before trial, but as the parties are expected to have made their best estimate when the application was first heard, the plaintiffs should not be made to increase the security for costs every time there is a change of solicitors, or fresh applications are made. In this case, an apportionment from the original amount of $375,000 would be a fairer variation. But an order for a further sum almost equivalent to the first amount just to cover the second defendant is excessive. The first and second plaintiffs appear to be financially sound and ostensibly respectable businessmen. Their claims do not appear to be frivolous or vexatious. In the circumstances, the question was: What would be an appropriate apportionment of the security already provided? The assistant registrar apportioned $20,000; but that was because she also ordered a further sum of $300,000. I am of the view that the sum to be awarded should be between $50,000 and $90,000 on the basis that she is one of the two principal defendants. The second defendant may, of course, apply to the trial judge for further security when the trial commences. But that is a matter for the trial judge to decide. He has wide discretion and may choose to hear the application at the start of the trial or at such stage of the trial as he may decide is appropriate to revisit the issue of security for costs.

7 The estimation of costs in advance cannot be made with precision. And, although the purpose is to allow a successful defendant an easier way of recovering his costs, that advantage is to be considered in the context of a defendant having to defend against a local plaintiff; where that plaintiff is impecunious, the defendant would be more at risk than having to defend against a wealthy foreign plaintiff. Thus, there should be no rule that a foreign plaintiff must cover the defendant fully. The court has to take into account all such factors as relevant and decide what would be a fair

amount.

8 For the reasons above, I varied the assistant registrar's orders by apportioning a sum of $50,000 (to cover the second defendant's costs) from the sum of $375,000 and by setting aside the order for the provision of a further sum of $300,000.

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