Firstlink Energy Pte Ltd v Creanovate Pte Ltd
[2006] SGHC 19

Case Number : Suit 521/2005

Decision Date : 27 January 2006

Tribunal/Court : High Court

Coram : Yeong Zee Kin AR

Counsel Name(s) : Low Chai Chong (with Loh Kia Meng) for the plaintiffs; Tan Teng Muan (with Loh Li Qing) for the defendants

Parties : Firstlink Energy Pte Ltd — Creanovate Pte Ltd

27 January 2006 *Judgment reserved.*

AR Yeong Zee Kin:

1. This is an application by the Plaintiffs to set aside interlocutory judgment entered by the Defendants in default of pleadings: the Defendants allege that the Plaintiffs defaulted when they failed to file their Reply and Defence to Counterclaim within the time directed by the court.

Background

2. By an Order of Court on 10 August 2005, the Defendant were directed to file and serve its Defence and Counterclaim by 29 August 2005 and the Plaintiffs were to file and serve its Reply and Defence to Counterclaim by 12 September 2005. The Defendants duly filed their Defence and Counterclaim on 29 August 2005. On 9 September 2005, the Plaintiffs filed a Notice of Change of Solicitors. On 12 September 2005, the Plaintiffs' solicitors filed and served its Reply and Defence to Counterclaim through the Electronic Filing System (EFS) using its File-n-Serve feature.

The Electronic Filing System

3. The EFS is a system for electronic filing service established under O 63A, r 2; the network service provider under O 63A, r 3 is CrimsonLogic Pte Ltd. Solicitors or law firms may apply to be registered users of the EFS within the meaning of O 63A, r 5. The EFS is used by solicitors to, *inter alia*, file documents with the registry and to serve documents on other registered users of the EFS. Order 63A prescribes a set of rules that govern the use of the EFS, including electronic filing (O63A, r 8) and service of documents (O63A, r 12). Both sets of solicitors in this case are registered users of the EFS.

4. Before the introduction of the File-n-Serve feature in 2005, electronic filing and service of documents were two separate functions of the EFS. The Rules of Court amply provided for the determination of when documents were effectively file with the registry and when they were effectively served on other registered users of the electronic filing service. With the introduction of the File-n-Serve feature in 2005, the electronic filing function and service of documents function were combined into a single process. The Rules of Court were not amended to cater for this for, as will be apparent subsequently, there was no need to.

5. The present application arises from two views taken of how the File-n-Serve feature works. The Plaintiffs' position is that this feature operated by the network service provider filing a document with the registry and serving the same document on the intended recipient simultaneously. The

Defendants contend that this feature operated in two stages: the document is filed with the registry and after acceptance by the registry, it is served on the Plaintiffs — essentially, filing service was effected by the registry.

The undisputed sequence of events

6. The sequence of events is amply recorded in various records from the network service provider and the EFS Certificate of Service. These facts are not in dispute. In summary, the events that took place upon Plaintiff's solicitors invocation of the File-n-Serve feature were as follows:

(a) On 12 September 2005—

(i) The Reply and Defence to Counterclaim was transmitted by the network service provider to the registry's system at 5:46:13 pm;

(b) On 13 September 2005—

(i) The Reply and Defence to Counterclaim was accepted by the registry at 10:01:09 am;

(ii) The document was transmitted back to the network service provider at 10:01:12 am;

(iii) The document was received by the network service provider's system at 10:22:39 am;

(iv) The document was transmitted to the Defendants' account at 10:31:07 am; and

(v) The document was retrieved by the Plaintiffs from their account at 10:33:05 am.

7. As the Reply and Defence to Counterclaim was making its way through the various systems and accounts, the following sequence of event took place on 13 September 2005 in the real world:

(a) At about 9:35 am, the Defendants' solicitors saw his clients and received instructions to file an application for default judgment;

(b) At about 10 am, the application for interlocutory judgment was filed and served; and

(c) The interlocutory judgment was received by the registry at 10:06:17 am.

8. Interlocutory judgment was granted on 15 September 2005.

The law relating to electronic filing and service of documents

9. Documents that are to be filed with the registry must be filed using the electronic filing service: O 63A, r 8(1). Order 63A, r 10 sets out the rules for determinating when a document is filed with the registry. When a registered user files a document with the registry using the electronic filing service, the date and time of filing is when 'the first part of the transmission is received in the computer account of the network service provider': O 63A, r 10. Hence, when a registered users invokes the electronic filing function of the EFS, his document is filed with the registry the moment when the first byte or part of his document is transmitted to and received by CrimsonLogic's servers.

10. A document may be served electronically on another registered user of the EFS provided that it is not a document that is required to be served personally or if the person to be served personally has agreed to be served using the electronic filing service: O 63A, r 12(1). The rule for determining when a document is served on a registered user is similar: O 63A, r 12(2)—

> The document shall be deemed to be served, delivered or otherwise conveyed on the date and at the time that the first part of the transmission is received in the computer account of the network service provider unless evidence to the contrary is adduced.

11. Thus, when the service of document function of the EFS is invoked, the document is served on the designated registered user the moment the first byte of the document is transmitted and received by CrimsonLogic's servers.

12. It will be noted that O 63A puts in place a system that determines the point of time of service with reference to the receipt, by the network service provider, of the first part of the transmission — the first byte rule — and not when the intended recipient actually receives the document, in whole or in part.

What happens when a document is filed and served simultaneously?

13. A document may be filed and served *sequentially*, by electronically filing the document with the registry first and immediately thereafter serving the document using the service of document function of the EFS. In such situations, filing and service are two separate sets of actions on the part of the solicitor's filing clerk, notwithstanding that they are carried out moments apart. The File-n-Serve feature combines these actions into a one click process.

14. From the undisputed sequence of events, when a document is electronically filed and served using the File-n-Serve feature, it is first transmitted to CrimsonLogic's servers and thence to the registry's system where it is processed. Upon acceptance, the document is transmitted back to CrimsonLogic's servers, whereupon a copy is deposited in the recipients' account and a copy into the account of the registered user filing and serving the document. The issue that arises is: when is service effected?

15. Plaintiffs' counsel argued that according to the Rules, service is effected when 'the first part of the transmission is received in the computer account of the network service provider': O 63A, r 12(2). According to the undisputed sequence of events, this would have occurred on 12 September 2005 at 5:46:13 pm and service of the Reply and Defence to Counterclaim would have been within the time directed by the court.

16. The Defendants argue that this cannot be the case as the earliest opportunity that they could have received any knowledge that the Reply and Defence to Counterclaim was served on them was when a copy was deposited in their account on 13 September 2005 at 10:31:07 am. Defence counsel argued that when the Reply and Defence to Counterclaim was served using the File-n-Serve feature, it was the registry that was serving the document on behalf of the Plaintiffs. If this is the case, then service was effected on 13 September 2005 at 10:22:39 am when the document re-entered CrimsonLogic's servers after acceptance by the registry.

17. Counsel for the Defence's argument cannot be accepted. To do so would be to hold that it is the registry that is effecting service on behalf of the Plaintiffs after the registry has accepted the document. Nothing in O 63A suggests that the registry is involved in the process of service of documents. Apart from the limited situations where the court is involved in the service of originating

process abroad through judicial authorities or Singapore consular authorities (under O 11, r 4), under the Warsaw Convention (under O 11, r 5), on a foreign state (under O 11, r 7) or where a court process server (under O 62, r 2), the scheme under the Rules of Court is such that the primary obligation to effect service lies on the parties and the registry is not generally involved in the service of documents. To hold that service of documents is effected by the registry when the File-n-Serve feature is invoked would run contrary to the Rules.

18. There is another fallacy in the argument that the earliest time that the Defendants could have known that the Reply and Defence to Counterclaim was served on them was when a copy of deposited into their account. Order 63A installs a system whereby the date and time of filing and service of documents is determined when the first part of the transmission is received by the network service provider and not when the registry receives the document filed or the party on whom the document is served receives it in its account. In other words, under O 63A the time filing or service is effected is when the first byte of the document is received by the network service provider; and not actual receipt of the document into the account of the registry (for filing) or the intended recipient (for service).

19. To my mind, it make no difference whether service is effected through the EFS by invoking the separate service of document function or when it is invoked as part of the File-n-Serve feature. Order 63A, r 12(2) applies in both situations and service is deemed to be served at the time the first part of the document is transmitted and received by CrimsonLogic's servers. In the present case, service of the Reply and Defence to Counterclaim was effected on 12 September 2005 at 5:46:13 pm.

What happens if a document is rejected by the registry?

20. In the scheme of File-n-Serve, it was suggested during arguments that once a document is rejected by the registry, a copy will not be deposited in the intended recipient's account when the rejected document is returned to the party filing the document. Under O 63A, the defective document would have been deemed served. We would then have a curious situation where the recipient is deemed served with a defective document but he will not be given a copy of it.

21. Had the party filing the document invoked the electronic filing function and service of document function separately, what would have happened is that upon rejection of the document by the registry, he would have had to rectify the error and file the document again. He would also have to serve the rectified document again. The earlier defective document, although served, would have no legal effect. At law, the document is properly served only after it has been rectified and served again. Of course, if the document is still defective and rejected a second time, the second service would not be effective; and the cycle repeats.

22. Where electronic filing and service of documents are effect using the File-n-Serve feature, the only difference is that the intended recipient does not receive a copy of the defective document. I am sure that no one will object too vigorously to this measure to reduce cluttering the recipient's account with defective documents. Thus, when a document is File-n-Served and it is rejected by the registry, the defective document is deemed served when it was first received by CrimsonLogic's servers; but this service has no legal effect. The defect in the document has to be rectified and File-n-Served again; and if it is accepted, the rectified document is deposited in the recipient's account and service is deemed effected when the document was first received by CrimsonLogic's servers; if the document is again rejected, the cycle repeats.

The role of the EFS Certificate of Service

23. During arguments, an EFS Certificate of Service was tendered. It showed the date and time of service of the Reply and Defence to Counterclaim as at 13 September 2005 at 10:31:07 am — the time when a copy of the document was deposited into the Defendants' solicitor's account. The effect of this certificate is set out in O 63A, r 12(4):

> The person serving the document may file a Registrar's certificate of service issued through the network service provider or the service bureau in lieu of an affidavit of service and the certificate shall be regarded as prima facie evidence of such service, delivery or conveyance on the date and at the time as stated.

24. As stated in the rule, the Certificate of Service has two functions:

(a) It replaces the affidavit of service and hence, an affidavit of service required under O 62, r 9 need not be filed; and

(b) It is *prima facie* evidence of the date and time of service.

25. The point to note is that the certificate is only *prima facie* evidence. Under O 63A, r 12(3), the Plaintiff is entitled to produce any:

> … record of the service, delivery or conveyance to the person on whom the document is served which is issued by the network service provider … as evidence of the service, delivery or conveyance, as well as the date and time of such service, delivery or conveyance.

26. The Certificate of Service is *prima facie* — but rebuttable — evidence of date and time of service. The records of service adduced in the supporting affidavit of Loh Kia Meng filed on 23 September 2005 have rebutted this presumption. Hence, I have found that the date and time of service to be on 12 September 2005 at 5:46:13 pm as deemed under O63A, r 12(2).

27. On this point, a final comment may be made. The system of issuing the EFS Certificate of Service should be altered in future in order to show the date and time when the document to be served in first received by CrimsonLogic's servers in order to reduce room for confusion.

28. In summary, I have concluded that O63A installs a system where the determination of when service of document through the EFS is effected is with reference to the receipt by the network service provider of the first part of the transmission. On this interpretation, I found that service of the Reply and Defence to Counterclaim was effected on 12 September 2005 at 5:46:13 pm, within the time ordered by the court. Accordingly, the interlocutory judgment entered on 13 September 2005 is set aside.

Plaintiffs' application is allowed.

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