Raffles Town Club Pte Ltd v Lim Eng Hock Peter and Others (Tung Yu-Lien Margaret and Others, Third Parties)
[2008] SGHC 141

Case Number : Suit 46/2006, RA 201/2007, 216/2007

Decision Date : 26 August 2008

Tribunal/Court : High Court

Coram : Kan Ting Chiu J

Counsel Name(s) : Ramesh Selvaraj and Lim Dao Kai (Allen & Gledhill LLP) for the plaintiff; Thio Shen Yi SC and Adeline Lee (TSMP Law Corporation) for the first defendant

Parties : Raffles Town Club Pte Ltd — Lim Eng Hock Peter; Ang Yee Lim Lawrence; Tan Leong Ko William; Foo Jong Long Dennis — Tung Yu-Lien Margaret; Lin Jian Wei; Ang Yee Lim Lawrence; Tan Leong Ko William

Civil Procedure – Discovery of documents – Whether 'train of inquiry' test relevant to discovery of particular documents – When class of documents sought for discovery considered wide or oppressive – Whether discovery of unrelated documents for purposes of comparison permissible

26 August 2008

Kan Ting Chiu J:

1 This matter arises from an order made for discovery of documents on the application of the first defendant, Lim Eng Hock Peter against the plaintiff, Raffles Town Club Pte Ltd, the developer and operator of the Raffles Town Club.

2 The plaintiff is suing the first defendant together with three other persons who are former directors of the plaintiff. In this action, the plaintiff claims that the first defendant was the *de facto* managing director or *de facto* director of the plaintiff between September 1996 and April 2001. The first defendant and his co-defendants are all separately represented in these proceedings.

3 The plaintiff's case against the first defendant and his co-defendants is that they failed to discharge their duties as directors of the plaintiff. The plaintiff's complaints come under three main heads. First, it was alleged that the first defendant and his co-defendants devised a scheme whereby an excessive number of memberships of Raffles Town Club were issued, and that led to successful claims by the members against the plaintiff for damages which the plaintiff was unable to satisfy. Secondly, the plaintiff alleged that the defendants caused the plaintiff to enter into a management agreement with Europa Holdings Ltd ('EH'), a company alleged to be in the control of the first defendant and his co-defendants, under which the plaintiff paid substantial management fees to EH, which EH then paid out to the first defendant and his co-defendants. The plaintiff claimed that EH had not provided the services under the management agreement to the plaintiff for which the management fees were paid. Third, the plaintiff alleged that the first defendant and his co-defendants wrongly caused the plaintiff to pay them substantial sums by way of directors' remuneration, expenses and consultancy fees which were not reasonable, justified or in the interests of the plaintiff. This included the payment of $5.7m to the first defendant for expenses, consultancy fees and incentive fees made between August 1997 and August 2000.

4 The first defendant's defence is that he was not a *de facto* managing director of the plaintiff, but was a consultant to the company, and that he had not caused any loss to the plaintiff. His case is that when he terminated his involvement with the plaintiff, the plaintiff was financially sound, with

$206m in cash reserves, short term investments and receivables (which was accepted by the plaintiff). He contends the plaintiff's funds have been depleted by acts and decisions of the plaintiff taken after his involvement with the company had ended.

5 He applied for and obtained orders for the discovery of the plaintiff's secretariat and financial records up to March 2001 (when he ceased to be involved with the company), and from March 2001 to January 2006 (from the termination of his involvement with the plaintiff to time of the filing of this action).

6 The plaintiff now accepts that it is to make disclosure of the pre-March 2001 documents, but it is appealing against the order for the discovery of the following documents from March 2001 to January 2006:-

(a) all minutes of meetings of directors of the plaintiff;

(b) all directors' resolutions of the plaintiff;

(c) all minutes of Annual General Meetings and Extraordinary General Meetings of the shareholders of the plaintiff;

(d) all audited financial statements of the plaintiff;

(e) all monthly management accounts of the plaintiff,

in respect of any expenditure or payments over S$500,000.00 made by the plaintiff out of the plaintiff's cash and/or assets; and

(f) all documents (including correspondence, agreements, invoices, payment vouchers and any other supporting documents) relating to the transaction(s) involving the payment of consultancy fees by the plaintiff to "China exploration".

7 Counsel submitted that discovery of the documents (a) to (e) is needed because an essential part of the first defendant's defence is that depletion of the plaintiff's funds and assets took place after he had terminated his relationship with the plaintiff. He argued that to establish the defence, the first defendant has to present to the court the depletion of the plaintiff's funds, the decisions which led to the depletion, and whether the decisions and the depletion were connected to his involvement with the plaintiff, and the need to have those documents for this purpose.

8 The documents under (f) relate to consultancy fees paid in 2003-2005 amounting to $7.3m for a project in China that the plaintiff considered. These fees were incurred after March 2003. The plaintiff has admitted the payment of these fees.

9 Two reasons were given for the discovery of these documents. First, it was to give an understanding of the management of the plaintiff and depletion of its funds, and second, to compare this payment, which the plaintiff considers a proper payment with the $5.7m consultation fees paid to the first defendant over the period August 1997-August 2000, which the plaintiff finds to be unreasonable and unjustified.

The rules on discovery

10 The first defendant had applied for the discovery of the documents under O 24 r 5(1) of the

Rules of Court, which governs the discovery of particular documents in contradistinction to r 2(1) which applies to the first stage of general discovery.

11 Under r 5(3), a document is subject to particular discovery if it is:

(a) a document on which the party relies or will rely;

(b) a document which could —

(i) adversely affect his own case;

(ii) adversely affect another party's case; or

(iii) support another party's case; and

(c) a document which may lead the party seeking discovery of it to a train of inquiry resulting in his obtaining information which may —

(i) adversely affect his own case;

(ii) adversely affect another party's case; or

(iii) support another party's case.

12 Particular discovery under r 5(3) differs from general discovery under r 1(2) in that whereas general discovery is restricted to documents under classes (a) and (b), particular discovery also extends to class (c) documents which do not contain the information under class (b), but which may lead to a train of inquiry resulting in obtaining of information under class (b).

13 The entitlement to discovery, whether general or particular, is conditional to the discovery being necessary. Order 24 r 7 stipulates that:

the Court may, if satisfied that discovery is not necessary, or not necessary at that stage of the cause or matter, dismiss or, as the case may be, adjourn the application and shall in any case refuse to make such an order if and so far as it is of opinion that discovery is not necessary either for disposing fairly of the cause or matter or for saving costs.

14 The operation of the rules of discovery was explained by the Court of Appeal in *Tan Chin Seng & Ors v Raffles Town Club Pte Ltd* [2002] 3 SLR 345:

13 [T]he rules governing discovery have undergone some important changes when they were reformed in 1996. Not only was the previous system of mutual discovery by parties after the close of pleadings replaced by a system of discovery by orders of court, the applicable test is also different. The previous test, to determine whether documents should be discovered, was governed by the words 'relating to any matter in question between them in the action' found in the previous O 24 r 2(1). This test was elucidated in the often quoted judgment of Brett LJ in the celebrated case *Compagnie Financiere et Commerciale du Pacifique v Peruvian Guano Co* (1882) 11 QBD 55 at 62–63:

… documents to be produced are not confined to those, which would be evidence either to prove or to disprove any matter in question in the action … The doctrine seems to me to go farther than that and to go as far as the principle which I am about to lay down. It seems to

me that every document relates to the matters in question in the action, which not only would be evidence upon any issue, but also which, it is reasonable to suppose, contains information which may — not which must — either directly or indirectly enable the party [requiring discovery] either to advance his own case or to damage the case of his adversary …

A document can properly be said to contain information which may enable the party [requiring discovery] to advance his own case or to damage the case of his adversary; if it is a document which may fairly lead him to a train of inquiry, which may have either of these two consequences.

14 So documents which were indirectly relevant by reason of their potential to set off 'a train of inquiry' resulting in the discovery of evidence of direct relevance were discoverable. But this somewhat open-ended criteria often gave rise to difficulties in application to particular circumstances, abuses or fishing. It also gave rise to a trend of discovering huge volumes of insignificant documents.

15 The criteria adopted by the new rules are more specific. They are set out in O 24 r 1(2):

The documents which a party to a cause or matter may be ordered to discover under paragraph (1) are as follows:

(a) the documents on which the party relies or will rely; and

(b) the documents which could —

(i) adversely affect his own case;

(ii) adversely affect another party's case; or

(iii) support another party's case.

There is, in addition, an overriding principle prescribed in r 7, which is, that the discovery must be 'necessary either for disposing fairly of the cause or matter or for saving costs'.

16 Documents which are now discoverable, other than those on which a party relies or will rely (r 1(2)(a)), will be those which could (1) adversely affect the party's own case; (2) adversely affect another party's case; or (3) support another party's case. It should be noted that the word there is 'could' not 'would'. So a document which has the 'potential of affecting' the party from whom the document is requested, is obliged to discover the same.

17 Thus caution must be exercised when considering decisions which were made under the previous rules because, in the words of Jeffrey Pinsler on *Singapore Court Practice* O 24, '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'. Documents which were required to be discovered under the concept of 'train of inquiry' are no longer discoverable under the present O 24 r 1. However, this is not to say that the concept of 'train of inquiry' has been removed from the Rules. It has reappeared in r 5 which relates to discovery of specific documents.

18 However, it must not thereby be taken that cases decided under the previous rules are no longer pertinent. As was the position under the previous rules, one of the essential preconditions

to be satisfied before discovery will be ordered is that of 'relevance'. Whether a document would affect that party's claim, or adversely affect another party's case, or support another party's case, must depend on the issues pleaded in the action. The cases that shed light on 'relevancy' are just as useful today.

19 Some of the principles on 'relevancy' established by the cases are the following. In *Thorpe* 's case (referred to earlier) it was decided that a document was not discoverable if it was to be used only for the purpose of cross-examination to establish credibility of witnesses. A discovered document can also be blanked out in part if the blanked out portion is irrelevant to the issues of the action: *GE Capital Corporate Finance Group v Bankers Trust Co* [1995] 2 All ER 993; [1995] 1 WLR 172. The discovery process should not be allowed to 'fish' a cause of action: see *Wright Norman v Oversea-Chinese Banking Corp* [1992] 2 SLR 710. Where an allegation is not pleaded, seeking discovery of a document to back up such an allegation constitutes fishing: *Marks & Spencer plc v Granada TV* (unreported, 8 April 1997).

15 The plaintiff objected to the discovery of the documents in question on the grounds that the classes of documents are too wide and oppressive, and that the documents are not necessary for the fair disposal of the case or for saving costs.

16 I will refer to the application for the documents in (a) to (e) first. The first defendant's defence is that when he ended his involvement with the plaintiff in March 2001, the plaintiff was financially sound. His defence is that the plaintiff's subsequent financial weakness had resulted from decisions and actions taken after March 2001. These documents come under r 5(3)(b) and (c).

17 Are they too wide and oppressive? That argument was made before me and led me to restrict the discovery to documents in respect of any expenditure or payments over S$500,000.00 made by the plaintiff out of the plaintiff's cash and/or assets.

18 Width and oppression should be viewed in the context of the circumstances. Discovery of *all* documents in the classes would be too wide and oppressive, as it would extend to documents which do not relate to the plaintiff's financial activities, and it may be oppressive if it extends to every expenditure and payment of the plaintiff. The $500,000 qualification narrows the discovery to matters and documents which had a significant impact on the plaintiff's finances. The restricted discovery of these documents is not too wide or oppressive, and comes properly under r 5(3).

19 The documents under (f) are of a different nature. The 'China exploration' expenditure is not directly in issue as it was incurred after March 2001. The first defendant was not involved with it, and there was no allegation by the plaintiff that the expenditure was improper or excessive. However, the documents fall under r 5(3)(a) because they enable a comparison to be made between payments for consultancy services made for the 'China exploration' project over which the plaintiff has no complaints, and the payments for consultancy services rendered by the first defendant, which the plaintiff alleges to be unreasonable and unjustified.

20 Is the discovery of the documents necessary for disposing fairly of the action or for saving costs? Taking into consideration the substantial claims, the financial resources of the parties and the tenacity with which the action has been conducted by the parties, it is very likely that the facts and issues will be fully examined and contested at the trial. Documents relevant to the issues will be identified, and their production will be sought. Documents produced in the course of a trial can result in long and unfocused examination because of counsel's unfamiliarity with the documents and lack of preparation. Another consequence may be that time has to be given for the documents to be studied, and where necessary, referred to experts. This would disrupt the progress of the hearing and add to

the length and the costs of the trial. The discovery of the documents in the circumstances is necessary for disposing fairly of the action and for saving costs.

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