Thio Keng Poon v Malaysia Dairy Industries Pte Ltd and Another and Another Suit [2008] SGHC 239

Case Number : Suit 734/2008, SUM 4898/2008

Decision Date : 24 December 2008

Tribunal/Court : High Court

Coram : Lee Seiu Kin J

Counsel Name(s) : Vinodh Coomaraswamy SC and Arvind Daas Naaidu (Shook Lin & Bok LLP) for the plaintiff; Adrian Tan (Drew & Napier LLC) for the defendant

Parties : Thio Keng Poon — Malaysia Dairy Industries Pte Ltd; Modern Dairy International Pte Ltd

Civil Procedure

24 December 2008

Lee Seiu Kin J:

1 In the application before me, Summons No 4898 of 2008 in Suit No 734 of 2008 ("Suit 734/2008"), the plaintiff prayed for an injunction against the 1st to 7th defendants restraining them from removing the plaintiff from his appointments of director, chairman, managing director of the 8th defendant ("the Company") pending trial, along with some related orders.

2 The problem with this application is that the plaintiff had made a similar application in Summons No 53 of 2008 ("Sum 53/2008") in Suit No 10 of 2008 ("Suit 10/2008"). That, together with three other applications were heard by Choo Han Teck J ("Choo J") who, on 22 September 2008 decided to make no order on the applications which were as follows:

(a) Plaintiff's application in Sum 53/2008 in Suit 10/2008 for injunction restraining defendants from removing plaintiff as director, etc.

(b) Defendant's application in Summons No 1656 of 2008 in Suit 10/2008 for summary judgment in the counterclaim.

(c) Defendant's application in Summons No 477 of 2008 in Originating Summons No 12 of 2008 ("OS 12/2008") to strike out the originating summons.

(d) Plaintiff's application in OS 12/2008 for declaration that removal of plaintiff from 9th defendant and 10th defendant was invalid on procedural grounds.

Choo J further ordered that OS 12/2008 be converted to writ action, and to be consolidated and heard together with Suit 10/2008. OS 12/2008 was converted to this suit, Suit 734/2008.

3 The issue before me was whether there had been any change of circumstances since the time Choo J dismissed the plaintiff's application for an injunction in Sum 53/2008 of Suit 10/2008. If there were no change in circumstances, then this application would amount to an appeal to me against the refusal by Choo J to grant an injunction on 22 September 2008.

4 Counsel for the plaintiff, Mr Vinodh Coomaraswamy SC ("Mr Coomaraswamy"), submitted that

the circumstances had changed because on 10 November 2008, the defendants gave notice of a meeting to be held on 25 November 2008 for the 8th defendant, 11th defendant and Totra (a third party company) and on the agenda was a proposal to pass a resolution to remove the plaintiff. He submitted that the circumstances now were therefore very different from those before Choo J and that the course of the hearing on 22 September 2008 would have been very different had there been an imminent meeting called to remove the plaintiff as was the case before me.

5 In reply, counsel for the defendants, Mr Adrian Tan ("Mr Tan"), pointed out that in the plaintiff's own affidavit before Choo J, he had envisaged the threat of removal from other companies in the group. At paragraph 7.8.14 of that affidavit he stated "if I were … removed as Director … of the companies in the Thio Group", showing that he envisaged removal from all the companies. And at paragraph 7.8.18 he said "TSP and TSW have, as yet, not tried to remove me in Thio Holdings. However, in light … I verily believe that [Thio Holdings] is their next target." Mr Tan submitted that it was contrived to say at the time that the plaintiff believed there would be irrevocable harm if he were removed, to now say that the existence of this threat was not before Choo J. Mr Tan submitted that this was exactly what that injunction was applied for before Choo J.

6 I did not agree with Mr Coomaraswamy that there has been a material change of circumstances after the decision by Choo J on 22 September 2008. The application before Choo J was for an injunction to restrain the defendants from removing the plaintiff as director, etc of the Company because the plaintiff feared that they would do so. The learned judge was not satisfied that the plaintiff had made out a case for such an injunction. Now the defendants are proceeding to do what the plaintiff envisaged they would do. With respect, I cannot see how that is a material change. For me to entertain the application would amount to hearing an appeal against the refusal by Choo J to grant the injunction on 22 September 2008. For this reason, I dismissed the application with costs.

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