Raffles Town Club Pte Ltd v Lim Eng Hock Peter and Others (Tung Yu-Lien Margaret and Others, Third Parties)
[2008] SGHC 28

Case Number : Suit 46/2006, RA 288/2007, 289/2007

Decision Date : 27 February 2008

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : K Shanmugam SC and William Ong (Allen & Gledhill LLP) for the plaintiff; Giam Chin Toon SC, Chiah Kok Khun and Tan Hsuan Boon (Wee Swee Teow & Co) for the first defendant; Andy Leon and Toh Wei Yi (Harry Elias Partnership) for the second defendant; Looi Teck Kheong (Edmond Pereira & Partners) for the third 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

27 February 2008

Choo Han Teck J:

1 The matter before me was an appeal by the first defendant and the cross-appeal by the plaintiff against the orders of Assistant Registrar Mr Jason Chan below. The application before the assistant registrar was made by the plaintiff for various paragraphs of the first defendant's defence to be struck out. The assistant registrar allowed the application as regards paragraphs 10-24, 35, 37, 46 and 47, and paragraphs 38.1, 40 and 44.7 insofar as paragraph 37 was repeated in these three paragraphs of the first defendant's defence. The plaintiff cross-appealed in respect of the assistant registrar's dismissal of its application to strike out paragraph 44.8. I dismissed both appeals with a minor variation in that I allowed paragraphs 14 insofar as it related to paragraphs 107-113 of the second defendant's defence and paragraph 46 of the first defendant's defence to be restored.

2 It will be necessary for me to set out the plaintiff's claim in this action and the defences in question. In this action, the plaintiff is suing the defendants as directors, and in the case of the first defendant, as a *de facto* director, for breach of fiduciary duties. The background to the action was set out in the statement of claim. The plaintiff was incorporated on 11 July 1996 to develop and operate a members' recreation club on land granted to a company called Europa Holdings Ltd ("Europa Holdings"). The first defendant and Europa Holdings are alleged to be *de facto* directors of the plaintiff. The plaintiff alleges that in 1996, the first defendant "devised a scheme to siphon substantial sums of money" from the plaintiff. The plan included offering memberships at low prices and accepting an excessively large number of members. The statement of claim elaborated in some detail how the "scheme" worked and how the defendants had thus wrongfully enriched themselves.

3 For present purposes, it is sufficient to set out the particulars of the money claimed by the plaintiff in this action. On 19 April 2001, the defendants settled a dispute among themselves. The settlement resulted in the ownership of the plaintiff resting in the second and third defendants (Lawrence Ang and William Tan). The second and third defendants then sold their shares in the plaintiff to the first and second third parties (Margaret Tung and Lin Jian Wei) by June 2001. A few

months thereafter, on November 2001, the club was sued (Suit No 1441 of 2001) by 4,895 of its members ("the members' suit") on the ground of misrepresentation. The club lost the action and was eventually ordered to pay $3,000 to each plaintiff. The matter between the club and those members and other members was finally resolved on 6 January 2006 by a court approved scheme of arrangement.

4 Reverting to the present matter, the plaintiff commenced this action against the defendants for their conduct resulting in the loss consequent upon the members' suit against the club in November 2001. The defence put up includes a total denial of the facts and breaches alleged. It is also averred that the plaintiff's action was commenced *mala fide*. Thirdly, it is said that the plaintiff was estopped from commencing the action. These are broad and general defences which generally would not be the subject of an application for striking out. A defendant generally does not invite a suit and is usually brought to court without choice. The courts are generally sympathetic and indulge the defendant by permitting him latitude in what he pleads in defence if the defences he raises are broad and general. Whether any particular evidence would subsequently be admitted or not at the trial would depend on whether the evidence in question is relevant to the issues.

5 In the present instance, the pleadings were substantial both in the claim and the defence. The plaintiff applied to the assistant registrar to strike out a number of the paragraphs in the first defendant's defence. The assistant registrar struck out paragraphs 10-24, 35, 37, 46 and 47, and paragraphs 38.1, 40 and 44.7 insofar as paragraph 37 was repeated. Paragraph 44.8 was not struck out. Brief grounds were given by the assistant registrar for his decision and these can be found in the court's minutes of 28 September 2007. The portions struck out under paragraphs 10-24 were averments to previous proceedings concerning a specific amount which the plaintiff is not claiming in this particular suit. However, I allowed the appeal in respect of paragraph 14 because this paragraph concerns the defence of estoppel, *viz* that the first and second third parties, as the "controlling mind and will" of the plaintiff, should be estopped from claiming damages from the first defendant through the plaintiff (in other words, the corporate veil should be lifted here) as they were aware of the first defendant's wrongdoings and must be taken to have ratified or waived them.

6 Paragraph 35 of the defence states:

> Further RTC to-date has refused, neglected and/or otherwise failed to commence any proceedings and/or claim any relief/s against EH in respect of the Management Agreement. Instead, RTC paid EH S$4.8 million for ECCR and then allowed EH to go into liquidation without making any claim in respect of the Management Agreement.

The assistant registrar was of the view that this paragraph in itself bore no semblance to any defence, and I agreed with him. It might be relevant as part of the evidence of a more general defence, but counsel did not persuade me that this was the case. If it were, then this paragraph would rightly belong in an affidavit of evidence-in-chief, and need not clutter the pleadings. Clutter may not be a sufficient reason to have a part of a defence struck out, but it would be a reason not to have it restored on appeal.

7 Paragraph 46 of the defence states as follows:

> Further or in the alternative, Ms Tung and Mr Lin are the controlling minds and will of RTC and Mr Lim avers that the veil of incorporation should be lifted in these proceedings. Mr Lim repeats and adopts mutatis mutandis paragraphs 113 and 114 of Mr Ang's Defence herein.

The assistant registrar was of the view that this was not relevant. However, insofar as the defence

that the corporate veil should be lifted to show that there was estoppel (see [5] above), this paragraph was relevant. It seemed to me that the estoppel defence would succeed only if the corporate veil was lifted. To that end, the first defendant was entitled to plead this paragraph. I, therefore, allowed this paragraph to be restored.

8 The assistant registrar struck out paragraph 47 on the ground that it was a bare assertion of coming to court with unclean hands. As I earlier stated, the courts would usually indulge a broad defence. However, in a defence as general as this, no purpose would be served if no particulars are given as to what constituted "unclean hands" in the case at hand. The defendants did not apply to amend this paragraph even though they could have done so.

9 In respect of paragraph 44.8, the assistant registrar was of the view that the defence related to an indemnity that arose after 2001. The plaintiff denied this, but that would be an issue for trial.

10 For the reasons above, the orders of the assistant registrar should stand save for variations to paragraphs 14 and 46 and I so ordered.

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