Rikvin Consultancy Pte Ltd *v* Pardeep Singh Boparai and another [2010] SGHC 191

Case Number	: Suit No 224 of 2010 (Summons No 1440 and 1465 of 2010)
Decision Date	: 05 July 2010
Tribunal/Court	: High Court
Coram	: Choo Han Teck J
Counsel Name(s)	: Vergis S Abraham, Clive Myint Soe and Vikna Rajah s/o Thambirajah (Drew & Napier LLC) for the plaintiff; S Suressh and Sunil Nair (Harry Elias Partnership LLP) for the defendants.
Parties	: Rikvin Consultancy Pte Ltd — Pardeep Singh Boparai and another

Civil procedure

5 July 2010

Choo Han Teck J:

1 The applications by the parties related to an interim injunction against the defendants. For the reasons below, I allowed the defendants' application to set aside the injunction order made pursuant to an *ex parte* application by the plaintiff.

2 The plaintiff Rikvin Consultancy and the second defendant Janus Corporate Solutions are competitors in the business of providing corporate secretarial services. The first defendant Pardeep Singh Bopari is a shareholder and director of Janus Corporate Solutions. On 10 March 2010, Rikvin's Managing Director, Ms Ragini Dhanvantray, pleaded guilty to three charges under the Companies Act for authorizing the lodging of false information with the Accounting and Corporate Regulatory Authority ("ACRA"). Two similar charges were taken into consideration for the purposes of sentencing. Ragini was fined a total of $21,000. On 16 March 2010, ACRA issued a press release in respect of this matter. Around 1 April 2010, the defendants published the following ("the article") on the website Guide Me Singapore:

> **Janus Offer to Rikvin Clients**
>
> On March 10, 2010 Ms Ragini Dhanvantray, the Managing Director of a Singapore based corporate services provided named Rikvin, pleaded guilty to charges arising out of multiple violations of the Companies Act of Singapore…
>
> In the light of the above, if you are re-evaluating your relationship with Rikvin, we would like you to consider switching to Janus. Janus offers a complete range of company administration and compliance services through its experienced team and affordable fees. To assist clients who want to move away from Rikvin but may have some time remaining on their pre-paid services with Rikvin, Janus is making the following offer:
>
> Janus will not charge you for any fees that you have pre-paid to RIkvin. The offer is subject to a maximum free period of 6 months.
>
> Please fill out our online form if you are interested in transferring your relationship to Janus.

The defendants referred to Ragini's conviction and made an offer to the customers of Rikvin who wished to have Janus take over the corporate services. Apart from the article, Pardeep Singh also admitted to issuing similar press releases on two other business websites ("the press releases").

3 Rikvin therefore brought an action against the defendants. First, it argued that the defendants had knowledge of its contracts, and embarked on a targeted campaign to intentionally induce its existing clients to breach their contracts. Secondly, it alleged that the contents of the article or press releases were defamatory. It contended that the article and press releases were understood to mean that it had conducted its business in a way that was criminal or improper, and, as a consequence, its reputation has been or is likely to have been seriously damaged. Thirdly, it contended that the defendants engaged in unfair practices as defined in s 4(a) of the Consumer Protection (Fair Trading) Act (Cap 52A, 2009 Rev Ed), causing it to suffer loss and damage. Fourthly, it contended that the defendants deliberately used unlawful means to interfere with its trade or business interests. Therefore, it claimed for an injunction to permanently restrain the defendants from posting or publishing the article or any other similar article elsewhere.

4 The defendants denied the above allegations. First, they denied procuring breaches of contract by Rikvin's customers, or using unlawful means to interfere with Rikvin's trade or business interests. The defendants contended that the contracts in question provided for early termination. Secondly, the defendants denied that the article or press releases were defamatory. They contended that the natural and ordinary meaning of the article factually described Rikvin's managing director having pleaded guilty to multiple violations of the Companies Act, and so, even if the words have a defamatory meaning and/or innuendo, they were true in substance and in fact, or were published on occasion of qualified privilege. Finally, they contended s 4(a) of the CPFTA did not apply because the contents of the article and press releases were true, and also because Rikvin was not a consumer as defined in the CPFTA.

5 On 1 April 2010, Rikvin applied before the AR, and was granted, an ex-parte application for the defendants to retract/remove the article and press releases, as well as be restrained from posting or publishing the article ("the interim injunction"). On 5 April 2010, the defendants applied to set aside the AR's orders. I made no order as to the defendants' application and proceeded to hear the plaintiff's application as an *inter partes* hearing. The issue presently therefore related to whether the interim injunction order should be upheld or set aside.

6 The defendants contended that Rikvin deliberately misrepresented or omitted material facts. First, they pointed out that Rikvin did not show the contract which they alleged will be breached. Secondly, that Ragini erroneously stated in her affidavit filed pursuant to the *ex parte* application that Pardeep Singh was a former shareholder of Rikvin's. (In fact, Pardeep Singh was a shareholder of Asiabiz Services Pte Ltd, which also provided corporate secretarial services, and which Ragini was a shareholder of. Rikvin alleged that it was partly through this arrangement that Pardeep Singh became familiar with Rikvin's set up and standard agreements. Pardeep Singh had subsequently sold his share in Asiabiz to Ragini.) Thirdly, that Rikvin did not substantiate the causes of actions it relied on. Finally, that Rikvin did not disclose the loss which it was going to suffer if the injunction was not granted.

7 Rikvin contended that it had satisfied its duty in an application for an *ex parte* injunction to make full and frank disclosure of material facts. In the alternative, if there had been any material non-disclosure, a failure on its part was inadvertent due to the haste in which the ex parte application was prepared given the urgency of the situation. Rikvin alleged that it was imperative for it to secure the injunction on 1 April 2010 (which was a Thursday and eve of a public holiday), otherwise, it would not have been able to obtain the injunction until four days later (i.e. on the Monday after).

8 I was of the view that there was no deliberate omission of facts by Rikvin. In its application, Rikvin disclosed to the court the offending article and the circumstances giving rise to it, including Ragini's conviction. This was sufficient for the court to assess if it would grant an interim injunction at that point. It was clear from the article that the defendants were addressing Rikvin's existing clients, and therefore possible to infer that the defendants were inducing Rikvin's clients to breach their contracts, thereby causing loss to Rikvin. For example, in *Union Traffic Ltd v Transport and General Workers' Union* [1989] ICR 98, in an application for an interim injunction, although the plaintiffs advanced their case of inducement of breaches of contract in very general terms without supporting evidence in the form of relevant contractual documents, the English CA found that the evidence before it was sufficient for it to find that the plaintiffs had a strong case. Whether or not the defendants committed a tort or did anything unlawful was a matter for trial. Furthermore, as noted in *Brink's-Mat v Elcombe* [1998] 3 All ER 188 (and affirmed by the CA in *Tay Long Kee Impex v Tan Beng Huwah (t/a Sing Kwang Wah)* [2000] 1 SLR(R) 786), the nature of *ex parte* applications necessitate some haste in its preparation and therefore the practical realities of preparing such an application cannot be overlooked.

9 Finally, I found Rikvin's error with regard to Pardeep Singh's shareholdings immaterial. It was clear that the basis of Rikvin's application before the AR was that Janus was a rival of Rikvin's and had published an article apparently inducing Rikvin's clients to breach their contract with it. Whether Pardeep Singh was or was not a shareholder of Rikvin did not detract from this claim.

10 Rikvin relied on *Films Rover International Ltd v Canon Film Sales Ltd* [1987] 1 WLR 670 ("*Films Rover International*) and *National Commercial Bank Jamaica Ltd v Olint Corpn Ltd* [2009] 1 WLR 1405 for the proposition that the importance lay not in whether the injunction was mandatory or prohibitive, but in what might lead to least irremediable prejudice. Thus, the court may grant a mandatory injunction even though it does not think that there would be a high degree of optimism in the plaintiff's case. First, Rikvin alleged that if the interlocutory injunction was discharged, the prejudice that it was likely to suffer was irremediable. This was because its existing customers would be induced to cross over to Janus, and even if Rikvin was ultimately successful in its claim against Janus, its existing clients were unlikely to return thereafter. Furthermore, the publication of the article and press releases would affect Rikvin's long-term business prospects and commercial reputation. Conversely, Rikvin argued that the defendants were unlikely to suffer any prejudice by the continuation of the injunction as it did not hamper or impede Janus from carrying on its business. Second, Rikvin alleged that it was difficult to ascertain the loss and damage that Rikvin would suffer if the injunction was set aside. This was because it would be difficult to quantify the extent of Rikvin's losses as that would depend on a number of imponderables e.g. how long Rikvin's existing customers would have required its services if they had not breached their contracts.

11 The defendants contended that since the application was for a mandatory injunction (as the defendants are required to retract the article and press releases), the court must be satisfied to a high degree of assurance that at trial, the injunction was rightly granted. However, even on the balance of convenience test, there was no basis for the interlocutory injunction. First, if Rikvin succeeded at trial, it may be adequately compensated by damages since it would be possible to establish which of Rikvin's clients switched over to Janus and damages may be computed accordingly. Conversely, the defendants contended that if they succeeded at trial, they would not be adequately compensated by damages. This was because the defendants would not be able to capitalise on the window of opportunity to attract customers from Rikvin and it would be impossible to quantify its losses as a result. Secondly, the defendants contended that where the factors of convenience were evenly balanced, the status quo i.e. immediately before the issuance of the writ, should be preserved. Therefore, the injunction should be set aside.

12 When determining whether to grant an interim injunction, the court must determine,

(a) whether there was a serious question to be tried;

(b) if there was, whether damages would not be an adequate remedy; and

(c) where the balance of convenience lay: *American Cyanamid Co v Ethicon Ltd* [1975] AC 396.

However, a distinction had been made between interim injunctions which are prohibitive in nature (where *American Cynamid* principles are applied) and those which are mandatory in nature. With regard to the latter, the Court of Appeal in *NCC International AB v Alliance Concrete Singapore Pte Ltd* [2008] 2 SLR(R) 565 (without reference to *Films Rover International*) reiterated that an interim mandatory injunction is a 'very exceptional discretionary remedy' and can only be justified by 'special circumstances'. In S*wiss Singapore Overseas Enterprises Pte Ltd v Navalmar UK Ltd* [2003] 1 SLR(R) 587, the High Court also applied the principle of requiring a 'high degree of assurance' that at the trial it would appear that an interim mandatory injunction had been rightly granted (see also *Shepherd Homes Ltd v Sandham* [1971] Ch 340). However, in *Films Rover International* (and subsequently *National Commercial Bank Jamaica*), the court considered the distinction to be merely a 'guideline' and the fundamental principle is that the court should take whichever course appears to carry the lower risk of injustice, if it should turn out to have been wrong at trial.

13 In my view, for this court to exercise its discretion to order an interim mandatory injunction, Rikvin must at least show that it would suffer irremediable prejudices. I found that even if Rikvin is ultimately successful in its claim, it would not suffer any prejudice which is not remediable by damages as a result of the setting aside of the mandatory injunction. In a claim under a tort for breach of contract, Rikvin would have to show that its clients breached their contracts in order to show that it suffered actionable damages (see *D C Thomson & Co Ltd v Deakin* [1952] Ch 646). From this, Rikvin would be able to show the number of clients it lost as a result of the defendants' inducement and damages can be calculated accordingly. Likewise in a defamation claim, damages may be awarded to compensate Rikvin's for its losses e.g. of income, goodwill etc. Certainly, a degree of approximation is inevitable in estimating the extent of damages e.g. based on the profits Rikvin expects to obtain from each lost client. However, assessment of damages is never an exact science, and it cannot be said that a claimant would suffer irretrievable prejudice simply because a precise amount of losses cannot be ascertained. The same may be said of the defendants' losses, although I was sympathetic to the defendants' contentions that it would be much harder to speculate how many clients the defendants could have gained by publishing the article and press releases.

14 Secondly, I took into account the parties' claims. This was a relevant factor in assessing the risk of injustice if the mandatory injunction was granted, although it must be emphasised that the strength of a party's case is neither a necessary nor sufficient condition for the grant of an interlocutory mandatory injunction (*Projector SA v Marubeni International Petroleum (S) Pte Ltd* [2004] 4 SLR(R) 233). Rikvin brought its claim under two primary causes of action- one under the head of the tort of inducing a breach of contract, and one under the head of defamation. With regard to the tort of inducing a breach of contract, on the evidence before the court, while it appeared that the defendants were attempting to induce Rikvin's clients to end their relationship with Rikvin and contract with Janus instead, the defendants (apart from their denial of knowledge of the terms of the contract) had good grounds to maintain that there would be no breach of contract if the contract

had been lawfully terminated prior to the transfer (*Thomson (DC) & Co v Deakin* [1952] Ch 646). With regard to the defamation claim, Rikvin might contend that the press releases and article adversely affected its reputation (and is therefore defamatory), however, the defendants had merely stated a fact i.e. that the plaintiff's managing director had pleaded guilty to charges under the Companies Act. This being an interlocutory application pending the main trial however, I need not say more except to note that in an application for an interlocutory injunction in a defamation action, the jurisdiction of the court must be exercised sparingly and only where it was clear that the statement complained of was libellous and no defence could possibly apply: *Chin Bay Ching v Merchant Ventures* [2005] 3 SLR(R) 142.

15 Having formed the view that Rikvin would not suffer irremediable prejudice and as there were no special circumstances in its favour (hence no great risk of injustice by the setting aside of the interim injunction), there was no need to discuss whether *American Cyanmid* applied, but briefly, I found that even on those principles, Rikvin's application would have failed for the same reasons above. Even if the balance of convenience is equal, the court should strive to preserve the status quo, which in the absence of any unreasonable delay between the time of the writ and the application for injunction, has been defined as the state of affairs immediately before the issue of the writ (*Garden Cottage Foods v Milk Marketing Board* [1984] AC 130). In this case, that would be after the article and press releases have been published by the defendants. Relying on *Flims Rover International*, Rikvin tried to distinguish between the 'status quo' and 'dynamic status quo'. In my view, Hoffmann J in *Films Rover International* was addressing a situation where although the injunction requested was negative in form, it was mandatory in effect. In such cases, the mandatory injunction would be needed to preserve the status quo (see *Films Rover International* at 681). In that case, the parties had a contractual agreement for the defendant to deliver the films to the plaintiff, and the status quo (which encompassed the process of distribution by the plaintiff after the delivery of films by the defendant) was therefore premised the continued performance of that agreement. In the present case however, I found that the status quo had both companies engaged in competition, including the publication of the article and press releases. This status should not be disturbed.

16 Accordingly, I discharged the injunction order. Given that there is a main action to determine the rights and liabilities of the parties, I ordered that the question of damages incurred by the defendants as a result of the interim injunction be reserved to trial. I further ordered for costs to be reserved and for parties to have liberty to apply.

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