Andiappan Vijayakumar (trading as Siga Solutions) *v* Chartered World Academy Pte Ltd [2010] SGHC 49

Case Number	: Suit No 1046 of 2009 (Summons No 6464/2009)
Decision Date	: 10 February 2010
Tribunal/Court	: High Court
Coram	: Steven Chong JC
Counsel Name(s)	: Krishna Morthy and Udeh Kumar s/o Sethuraju (S K Kumar & Associates) for the plaintiff; Mok Chin Tee and Jonathan Tan (Mok & Tan) for the defendant.
Parties	: Andiappan Vijayakumar (trading as Siga Solutions) — Chartered World Academy Pte Ltd

Civil procedure

10 February 2010

Steven Chong JC:

Introduction

1 On 24 December 2009 I heard the defendant's application to set aside an interim injunction obtained by the plaintiff on an *ex-parte* basis. In the course of the hearing, the parties reached an agreement and I recorded a consent order ("the Consent Order") for the interim injunction to continue subject to the terms agreed between the parties.

2 The plaintiff wrote in to seek clarification on the Consent Order. I heard the parties on 8 January 2010 and confirmed that the Consent Order was to stand.

3 On 22 January 2010, the plaintiff filed a notice of appeal against the Consent Order. I make no comment on the propriety of the plaintiff's appeal except to observe that under s 34(1)(d) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA"), there is no right of appeal to the Court of Appeal in the case of a consent order.

Facts

4 The defendant, Chartered World Academy Pte Ltd ("the defendant") were the head tenants of the premises known as 361 Ubi Road, Singapore 408664 ("the Premises"). On 31 August 2009, the defendant entered into a tenancy agreement ("the Tenancy Agreement") with Andiappan Vijayakumar ("the plaintiff"), under which the defendant agreed to sublet the Premises for a period of two years at the monthly rent of S$150,000 plus GST.

5 Barely two months after the Tenancy Agreement was signed, a dispute arose between the parties. The defendant claimed the plaintiff had made late payment for the October rent, and had failed to pay the November rent altogether. On his part, the plaintiff accused the defendant of being unwilling to assist him in submitting new plans to the Building and Construction Authority ("BCA") to increase the capacity of the Premises to house additional foreign workers.

6 The dispute escalated to the point where the defendant issued an ultimatum to the plaintiff

and threatened to terminate the Tenancy Agreement and cut off the supply of electricity, water and power supply if the November rent was not paid by 3 December 2009. In response, the plaintiff applied for an *ex-parte* injunction on 11 December to prevent the defendant from disrupting the said supply.

Hearing before Justice Tay Yong Kwang

7 The plaintiff's application was heard on 11 December 2009 by Justice Tay Yong Kwang. Tay J granted the plaintiff's application for an injunction preventing the defendant and its agents from applying to cut off the supply of electricity, water and power supply to the Premises ("the Injunction") until the determination of the dispute or until further order.

Defendant's application to set aside the Injunction

8 The defendant, being dissatisfied with the Injunction, applied to have it set aside. I heard this application in chambers on 24 December 2009.

9 During the hearing, counsel for the plaintiff, Mr Krishna Moorthy, sought to resist the defendant's application by alleging, *inter alia*, that the defendant had, contrary to their earlier representations, failed to redesign the Premises so that approval could be obtained for the Premises to house more than 1200 foreign workers. In response, counsel for the defendant referred to the BCA approved plans which were provided to the plaintiff to highlight that the Premises was only approved for use as a dormitory up to a maximum of 404 workers. The plaintiff was instead housing more than 900 workers in contravention of the approved plans. The defendant's counsel further submitted that the plaintiff was still collecting fees from contractors for housing their foreign workers but at the same time was not paying any rental to the defendant. Even though the plaintiff had alleged misrepresentation against the defendant, he was not seeking rescission of the Tenancy Agreement. The plaintiff wanted to continue to use the Premises, charge and collect fees from contractors to house their foreign workers and not pay any rental to the defendant. At the same time, the defendant was receiving letters of demand from the head landlord for the outstanding rental.

10 Under these circumstances, counsel for the plaintiff requested for the matter to be stood down to take instructions. When the hearing resumed, the plaintiff proposed for the interim injunction to continue on the following terms:

(a) the plaintiff shall pay the arrears of rental due and owing to the defendant by 30 December 2009;

(b) the plaintiff shall resume paying the full rent of S$150,000 in accordance with the terms of the Tenancy Agreement dated 31 August 2009; and

(c) the plaintiff is to prepare a fresh plan for submission to the BCA and/or relevant authorities to obtain approval to use the Premises to house up to 1,200 workers within one month from the date of the order, and the defendant were to assist the plaintiff in submitting the plans.

11 Counsel for the defendant confirmed that the defendant had no objection for the interim injunction to continue on the terms proposed by the plaintiff.

12 Following the parties' agreement, I recorded the Consent Order on the following terms:

1. The interim injunction is to continue subject to the following terms:

(a) the plaintiff shall pay the arrears of rental due and owing to the defendant by 30 December 2009;

(b) the plaintiff shall resume paying the full rent of S$150,000 in accordance with the terms of the Tenancy Agreement dated 31 August 2009;

(c) the plaintiff is to prepare a fresh plan for submission to the BCA and/or relevant authorities to obtain approval to use the Premises to house up to 1,200 workers within one month from the date of the order and the defendant is to assist the plaintiff in submitting the plans;

2. Costs of the application to be costs in the cause;

3. Liberty to apply.

The plaintiff's request for clarifications

13 On 27 December 2009, the plaintiff's solicitors wrote to the Registrar of the Supreme Court to request for another hearing to clarify some of the directions in the Consent Order. From the letter, it is clear that the plaintiff fully acknowledged that it was a Consent Order.

14 When I heard the plaintiff's application on 8 January 2010, it soon became clear to me that the plaintiff was not really seeking to clarify the Consent Order but rather to re-open the merits of the underlying dispute. On this occasion, the plaintiff was represented by a different counsel from the same firm. Mr Udeh Kumar appeared in place of Mr Krishna Moorthy. Essentially, the plaintiff claimed that the defendant had not obtained prior approval from the head landlord before entering into the Tenancy Agreement. The lack of prior approval, it was alleged, had the effect of rendering the Tenancy Agreement *void ab initio*. Accordingly, the defendant was not entitled to rely on the Consent Order to enforce payment of the outstanding rental. Despite this submission, the plaintiff was still not seeking to rescind the Tenancy Agreement. The plaintiff wanted to continue to have use of the Premises without paying the contractual rental.

15 I rejected the plaintiff's arguments for the following reasons:

(a) First, it is trite law that the proper procedure to set aside a consent order is by commencing new proceedings. The reason for this is that a consent order is treated as a "contract" between the parties to settle the dispute. Once the consent order has been recorded, the old proceedings are spent. Hence, the proper way to set aside the consent order is by commencing fresh proceedings: see *Wiltopps (Asia) Ltd v Drew & Napier and another* [1999] 1 SLR(R) 252.

(b) Secondly, the request for further arguments was, *inter alia*, to seek my direction to enable the plaintiff to pay the disputed rental into court or to the plaintiff's solicitors as opposed to the agreed term to pay the arrears and the rental to the defendant. However, plaintiff's counsel admitted that there was no evidence that the defendant would not be able to repay the rental monies in the event that the Tenancy Agreement turned out to be void. In such circumstances, there was no reason why the plaintiff should be allowed to withhold the payment of the rent to

the defendant while enjoying the use of the Premises and collecting fees from contractors. The plaintiff then sought a two week time extension to pay the arrears and the rental to the defendant. As it was a Consent Order, I asked the defendant whether they would agree to the requested time extension to which they answered in the negative.

16 Accordingly, I ordered that the Consent Order made on 24 December 2009 was to stand.

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