Robert Bosch GmbH and another *v* YSH Pte Ltd
[2011] SGHC 148

Case Number	: Suit No 400 of 2010 (Registrar's Appeal No 54 of 2011)
Decision Date	: 08 June 2011
Tribunal/Court	: High Court
Coram	: Andrew Ang J
Counsel Name(s)	: Adrian Wong and Andrea Baker (Rajah & Tann LLP) and Nurul Asyikin (Gateway Law Corporation) for the plaintiffs; Mark Goh (Intelleigen Legal LLC) for the defendant.
Parties	: ROBERT BOSCH GMBH — ROBERT BOSCH (SEA) PTE LTD — YSH PTE LTD

Contract – Civil Procedure

[LawNet Admin Note:

Errata: In the heading above [23] and the first sentence of [23], it should read "O 18 r 19" instead of "O 18 r 9".

The HTML incorporates the above amendment.]

8 June 2011

Andrew Ang J:

Introduction

1 The plaintiffs, Robert Bosch GmbH and Robert Bosch (SEA) Pte Ltd ("the Plaintiffs"), appealed against the judgment of the assistant registrar ("the Assistant Registrar") in Suit No 400 of 2010 ("Suit 400"). The AR had allowed an application taken out by YSH Pte Ltd ("the Defendant") to discontinue the Plaintiffs' action on the basis that the parties had agreed to a valid settlement agreement on 7 January 2011.

2 After hearing the submissions of the Plaintiffs and the Defendant, I allowed the Plaintiffs' appeal. I now give my reasons.

Factual background

3 Suit 400 was initiated by the Plaintiffs against the Defendant for trademark infringement, passing off and copyright infringement.

4 There was some attempt by the parties to reach a settlement agreement. In particular, in a letter dated 29 December 2010 ("the Offer"), the Plaintiffs' solicitors wrote to the Defendant's solicitors stating the following:

> Our clients have instructed us to counter-propose the following terms, in full and final settlement of the current action:

1. Your client publishes a quarter-page advertisement in The Straits Times and one local Chinese daily newspaper, which clarifies that the 'SINGTECH' wiper blades are wholly unrelated to Bosch's Aerotwin wiper blades, the exact wording of which is to be approved by our clients.

2. Your client pays for the publication of the abovementioned advertisements.

3. Your client is to provide accurate and useful information regarding the identity and business practices of the China suppliers or printers which supplied the packaging that are the subject of the current action. The said information will only be accepted, if its veracity is confirmed by our clients' China associates.

4. Our clients and your client are to withdraw all claims arising out of the current action.

5. Each party will bear their own costs in the matter.

5 The Defendant's counsel, Mark Goh (writing on behalf of his instructing solicitors Intelleigen Legal LLC which firm he later joined), replied in a letter dated 7 January 2011 to the Plaintiffs' solicitors ("the Reply"). The Defendant alleged that this constituted an acceptance of the Offer. The relevant sections of the Reply are as follows:

2. Our clients' instructions are as follows:

a. Our clients are agreeable to your clients' item 1.

b. Our clients are agreeable to your clients' item 2.

c. As regards item 3, our client is only able to assist you in so far as to information already available to you through your seizure.

d. Our clients are agreeable to items 4 and 5.

3. Finally, as all the matters have been substantially agreed, we trust that all action, including SUM No. 5796 of 2010/C will cease.

6 In a separate application, Summons No 388 of 2011 dated 26 January 2011, the Defendant applied, pursuant to O 21 r 3 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the Rules"), for Suit 400 to be discontinued on the basis that a compromise agreement had been reached as evidenced from the parties' correspondence.

Decision of the AR

7 The AR allowed the Defendant's application and directed that Suit 400 be discontinued on the basis that the parties had agreed to a settlement on 7 January 2011. The third item of the Offer (*ie*, "Your client is to provide accurate and useful information ..." reproduced above at [4]) was interpreted to mean that the Defendant was to provide whatever information it had regarding the China suppliers. The Reply was not a counter-offer or rejection because the Defendant had already given the Plaintiffs what they wanted.

Parties' submissions on appeal

8 The Plaintiffs submitted first, that the Defendant had not accepted the terms of the Offer; and

second, that the terms of the alleged compromise agreement were too uncertain to be enforceable.

9 The Defendant submitted the following: first, that all the requisite conditions for a compromise were present and, accordingly, there was an identifiable agreement that was complete and certain; and second, that the Plaintiffs' had acted *mala fides* and had an "ulterior motive to force and/or bargain for a better deal" than that which had allegedly crystallised on 7 January 2011.

Decision of this court

The technical point regarding O 21 r 3

10 I found it curious that the Defendant applied to discontinue the Plaintiffs' action under O 21 r 3 of the Rules. Even more puzzling, this application was actually granted by the AR. It is plain that O 21 r 3 only allows one to discontinue one's own action, not another party's. This is clear from the wording of O 21 r 3(1), reproduced below:

> Discontinuance of action, etc., with leave
>
> 3.—(1) Except as provided by Rule 2, *a party may not discontinue an action* (whether begun by writ or otherwise) or counterclaim, or withdraw any particular claim *made by him* therein, without the leave of the Court, and the Court hearing an application for the grant of such leave may order the action or counterclaim to be discontinued, or any particular claim made therein to be struck out, as against all or any of the parties against whom it is brought or made on such terms as to costs, the bringing of a subsequent action or otherwise as it thinks just.
>
> [emphasis added]

11 In fact, I note that counsel for the Defendant actually stated that he could not "submit on O 21 r 3" during the Chambers hearing before the AR, admitting that he "may have got it wrong". Accordingly, I found that the Defendant's application was wholly without grounds or merit. In the same vein, the AR erred in ordering the Plaintiffs to discontinue their action against the Defendant pursuant to O 21 r 3.

12 In the interest of expedition, although no application under O 18 r 19 had been made, I proceeded to consider the matter as though the Defendant had applied to strike out the Plaintiffs' action under O 18 r 19. On that basis, I addressed the following issue of the alleged compromise agreement.

The compromise agreement

The applicable law

13 The law on compromise is well established and was comprehensively detailed in the recent case of *Gay Choon Ing v Loh Sze Ti Terence Peter* [2009] 2 SLR(R) 332 at [47]–[72]. Essentially, the general principles of contract law apply equally to the law of compromise. Thus, a compromise will only arise if the following requirements are fulfilled (per Andrew Phang JA at [46]–[47]):

> (1) *consensus ad idem* or an identifiable agreement that is complete and certain (the preferred identifying tool of choice being the traditional "offer and acceptance" model);
>
> (2) consideration; and

(3) an intention to create legal relations.

To ascertain if an agreement has been reached, the court is to consider the whole course of the negotiations between both parties, in accordance with the concepts of offer and acceptance (per Phang JA at [63]). This is an objective inquiry as emphasised in *Aircharter World Pte Ltd v Kontena Nasional Bhd* [1999] 2 SLR(R) 440 at [30], *Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 2 SLR(R) 407 at [40] and *Chia Ee Lin Evelyn v Teh Guek Ngor Engelin née Tan* [2004] 4 SLR(R) 330 at [43].

14 Of the above three requirements, the only one in issue in this case was whether there was an identifiable agreement that was both complete and certain.

Application to the facts

15 It was incontrovertible that the terms of the Offer constituted an offer. This was apparent from the statement "Our clients have instructed us to counter-propose the following terms, in full and final settlement of the current action" – in particular, the words "counter-propose" and "full and final settlement".

16 The real issue was whether the Reply constituted a final and unqualified expression of assent to the terms of the Offer or what is typically referred to as an "acceptance" (as described in Edwin Peel, *Treitel: The Law of Contract* (Sweet & Maxwell, 12th Ed, 2007) at para 2-015). In the Reply, the Defendant's counsel wrote that the Defendant was "agreeable to" Items 1, 2, 4 and 5 of the Offer (above at [4]). However, with regard to Item 3, which was as follows:

> 3. Your client is to provide accurate and useful information regarding the identity and business practices of the China suppliers or printers which supplied the packaging that are the subject of the current action. The said information will only be accepted, if its veracity is confirmed by our clients' China associates.

the Defendant responded with the following:

> c. As regards Item 3, our client is only able to assist you in so far as to information already available to you through your seizure.

17 I found it helpful to focus the discussion on two issues: first, interpretation of Item 3; and second, whether the reply thereto amounted to an acceptance.

Interpretation of Item 3

18 To accept the Defendant's contention that there was a valid compromise, one would need to interpret Item 3 as a paradoxical request for information already in the Plaintiffs' custody subsequent to a seizure order. I found such an interpretation completely untenable. It would be both illogical and superfluous for the Plaintiffs to include a request for "useful and accurate information" in a settlement agreement if it already possessed the same information. The potential vagueness of the phrase "useful and accurate" aside, Item 3 should be read as the Plaintiffs asking for *more* than what was already available in their custody.

Reply to Item 3 was not an acceptance

19 Even from a cursory reading of the reply to Item 3, I surmised that the Defendant did not

accept the terms of the Offer. A juxtaposition of the reply to Item 3 and the reply to Items 1, 2, 4 and 5 made the lack of an acceptance, *viz*, Item 3, evident. The Defendant's reply to Items 1, 2, 4 and 5 was "[o]ur clients are agreeable". In contrast, the reply to Item 3 contains no mention of any agreement or any cognate term. Instead, the reply to Item 3 reads: "As regards item 3, our client is only able to assist you in so far as to information already available to you through your seizure." Consequently, the obvious logical conclusion one could draw was that the Defendant was *not* agreeable to Item 3.

20 Going deeper into the substance of the reply to Item 3, it was equally clear that it could not in any circumstance be described as an unequivocal and unqualified expression of assent to the terms in Item 3 (which were determined above at [18] to be a request for information not presently in the Plaintiffs' custody). At best, the reply to Item 3 might be considered qualified acceptance of the Offer leaving the agreement incomplete – but, even then, I did not find this to be so, as mentioned above at [19]. In fact, I found it more likely that the reply to Item 3 amounted to a rejection and counter-offer.

21 As the reply to Item 3 did not correlate to the request in Item 3 for "useful and accurate information", I found that the Defendant's reply plainly did *not* constitute an acceptance. Although the Defendant agreed to Items 1, 2, 4 and 5, they crucially it did not assent to Item 3. Consequently, negotiations between the parties had not crystallised into a contractually binding compromise agreement.

22 Having already determined that no compromise agreement had crystallised, I found it unnecessary to consider the Plaintiffs' second contention, *viz*, that the terms of the reply to Item 3 were too vague and uncertain to be enforceable.

O 18 r 19 did not apply

23 Apart from the allegation that a compromise agreement had been reached, nothing else that would constitute grounds for invoking O 18 r 19 was pleaded. There was no other suggestion that the Plaintiffs' case was scandalous, frivolous or vexatious. There was similarly nothing else which indicated that allowing the Plaintiffs' action would prejudice, embarrass or delay the fair trial of the action or that it would be an abuse of the process of the court. Finally, the Defendant did not argue that the Plaintiffs' Suit 400 did not disclose a reasonable cause of action.

24 Accordingly, having found that a compromise agreement had not been reached, I concluded that O 18 r 19 did not apply.

25 I therefore allowed the Plaintiffs' appeal and set aside the costs order below. I allowed the Plaintiffs' costs of the appeal and below in the sum of $4,000 together with reasonable disbursements.

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