Yong Sheng Goldsmith Pte Ltd *v* Liberty Insurance Pte Ltd
[2011] SGHC 156

Case Number : Suit No 946 of 2010 (Summons No 1423 of 2011)

Decision Date : 24 June 2011

Tribunal/Court : High Court

Coram : Fong Mian Yi Seraphina AR

Counsel Name(s) : Charles Phua Cheng Sye/ Steven Cheong (Tan Kok Quan Partnership) for the plaintiff; N K Rajarh (M Rama Law Corporation) for the defendant.

Parties : Yong Sheng Goldsmith Pte Ltd — Liberty Insurance Pte Ltd

Civil Procedure

Insurance

24 June 2011 Judgment reserved.

Fong Mian Yi Seraphina AR:

Introduction

1 This is an application for summary judgment by the plaintiff under O 14 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the Rules of Court"). The plaintiff, Yong Sheng Goldsmith Pte Ltd, entered into a contract of insurance with the defendant, Liberty Insurance Pte Ltd. Pursuant to the insurance policy, the defendant was liable to indemnify the plaintiff for loss suffered as a result of a hold up or armed robbery up to the policy limit of S$3 million. Subsequently, an armed robbery occurred at the plaintiff's insured premises. However the defendant refused to indemnify the plaintiff and claimed that the insurance contract was void *ab initio* due to material non-disclosure on the part of the plaintiff.

The facts

2 The plaintiff is, at all material times, a company incorporated in Singapore carrying on the business of the retail of gold/diamond jewellery, precious stone and the manufacture of jewellery. Around 2003, the plaintiff entered into a contract of insurance with the defendant, who is at all material times, an insurance company incorporated in Singapore. The plaintiff renewed this jewellers' block insurance policy yearly. The policy that concerns us is the contract renewed in 2009, to cover the period from 1 December 2009 to 30 November 2009 ("the Policy"), whereby the defendant agreed to insure, *inter alia*, stock and merchandise used in the conduct of the plaintiff's business, situated at Block 210 New Upper Changi Road, #01-727 Singapore ("the Insured Premises") in consideration of the payment of the premium of S$14,996.49 by the plaintiff. The plaintiff paid the premium and the Policy was issued to the plaintiff to cover the stock and merchandise at the Insured Premises for the period from 1 December 2009 to 30 November 2010. The Policy provided that the defendant was liable to indemnify the plaintiff for loss suffered as a result of a hold up or armed robbery up to the policy limit of S$3 million.

3 On 23 April 2010, an armed robbery occurred at the Insured Premises. The defendant's loss adjustors assessed the market value of the gold seized by the armed robbers at S$857,441.25. As the

armed robbery at the Insured Premises was an insured event under the policy, the plaintiff notified the said loss to one Johnny Tan ("Johnny"), whom the plaintiff asserts was at all material times the defendant's agent dealing with the plaintiff's Policy.

4 However, on 4 November 2010, the defendant informed the plaintiff by way of letter that the Policy was repudiated on the basis of material non-disclosure by the plaintiff. The defendant alleged that the plaintiff failed to disclose the fact that the Insured Premises was the subject of loan shark harassment prior to the commencement of the Policy on 23 October 2009 and 26 October 2009. The Insured Premises was also subject to loan shark harassment on 28 November 2009, 24 January 2010 and 27 March 2010. Thereafter the defendant returned the policy premium of S$14,996.49 by way of cheque to the plaintiff.

The plaintiff's claim

5 The plaintiff contends that the defendant's allegations are baseless as they had notified Johnny of the loan shark harassment on 23 October 2009. The plaintiff relies on telephone records exhibited in the plaintiff's director Lim Chiow Kiat's ("Lim") affidavit, which revealed that Lim had made telephone calls to Johnny on the relevant dates.

6 In addition, the plaintiff claims that they have been informed by the CID officer investigating the armed robbery that the loan shark activities were unrelated to the armed robbery and had also invited the defendant to confirm the same with the CID officer via telephone.

7 As such, the plaintiff submits that they have disclosed the loan shark activities to the defendant via Johnny, the defendant's agent and the defendant therefore had no basis to repudiate the Policy. The plaintiff thus seeks summary judgment against the defendant for the sum of S$857,441.25.

The defendant's claim

8 In its defence, the defendant claims that the first time it had acquired any knowledge of the loan shark activities was when the defendant's loss adjuster investigated the robbery and was informed by Lim that the Insured Premises had been the target of loan shark attacks on four occasions in October 2009.

9 While the defendant admits that Johnny was a registered agent with the defendant, the defendant denies that he was an agent of the defendant in respect of the plaintiff's Policy. The defendant submits that the agency which acted in respect of the Policy was in fact, one Aon Insurance Agencies Pte Ltd ("Aon"), and that the defendant had no knowledge that Johnny was involved in the Policy. As such, Johnny's knowledge of the loan shark activities cannot be attributed to the defendant and no disclosure by the plaintiff can be deemed to have occurred.

The present application

10 The plaintiff applied for summary judgment under O 14 r 3 of the Rules of Court. The relevant provision of the Rules of Court provides:

> **Judgment for plaintiff**
>
> 3 – (1) Unless on the hearing of an application under Rule 1 either the Court dismisses the application or the defendant satisfies the Court with respect to the claim, or part of a claim, to

which the application relates that there is an issue or question in dispute which ought to be tried or that there ought for some other reason to be trial of that claim or part, the Court may give such judgment for the plaintiff against that defendant on that claim or part as may be just having regard to the nature of the remedy or relief claimed.

The issues

11 The issues that need to be dealt with in the present matter are:

(a) Was Johnny an agent of the defendant;

(b) If so, whether Johnny's knowledge could be imputed to the defendant; and

(c) Was there in any event, material non-disclosure on the part of the plaintiffs?

Was Johnny an agent of the defendant?

12 The plaintiff claims that the defendant's allegation that there was material non-disclosure on the plaintiff's part is completely baseless as they had notified Johnny, who was the defendant's agent and therefore knowledge on the part of the agent would bind his principal. The plaintiff pointed to a copy of Johnny's name card exhibited at Lim's affidavit, which included the following:

(i) The defendant's name "Liberty Insurance – Member of Liberty Mutual Group";

(ii) The name "Tan Johnny" with the title "Insurance Agent" below the name;

(iii) Johnny's contact details; and

(iv) The registered contact details of the defendant.

13 In addition, Johnny had filed an affidavit stating that he was indeed a registered agent of the defendant since 2003 or earlier and that he was the defendant's agent in respect of the procurement of the Policy. Johnny had also dealt with all subsequent renewals of the policy.

14 The plaintiff's counsel relied on the authority of *Michael Martin & Anor v Britannia Life Limited* [2000] Lloyd's Rep PN 412 and in particular, at [5.3.4] – [5.3.6]:

> ... the business card which [the defendant's representative] proffered at the outset of the meting ... was the clearest representation that he was authorised by [Life Association of Scotland ("LAS")] to give such financial advice ... I plainly did represent, in my judgment, that [the defendant's representative] was authorised to give advice in relation to the sale of insurance ... the inference is overwhelming that the representation in the business card was intended by LAS to be acted on by clients to whom it was presented, in the sense that the clients would be reassured that the salesman who presented the card was backed by a responsible insurance company: that, presumably, was the primary, if not the whole, purpose of the card ... the representation was in fact acted upon by [the plaintiffs] in that each of them

> proceeded throughout on the footing that in giving advice [the defendant's representative] was acting in every respect as the agent of LAS, with authority from LAS so to act.

I found this to be helpful and relevant to the present matter. It is clear that the plaintiff had, since 2003, considered Johnny to be an agent of the defendant, and had authority from the defendant to act in the matters of its Policy. The plaintiff had only dealt with Johnny in relation to the Policy by contacting him on the mobile number reflected on the exhibited name card. Additionally, Johnny had handled the yearly renewals of the Policy from 2003 to 2009. Further, the plaintiff had also contacted Johnny multiple times after the first loan shark harassment on 23 October 2009, including on 23 October 2009 itself, to inform Johnny of the same. Evidently, the plaintiff had felt it necessary to inform the defendant of this, and had therefore contacted the defendant's agent Johnny, as they usually had in matters relating to the Policy.

15 It is also vital to note that the defendant admits that Johnny was a registered agent with them. As such, it was only logical for the plaintiff to rely on the representation of the name card that Johnny was authorised to act on behalf of the defendant in respect of the Policy.

16 However, the defendant alleges that Johnny was never the agent on behalf of the defendant in respect of this Policy and that it was actually Aon who was the agent. This was however only raised in the show cause affidavit, and not in the defence. The defendant further claims that it had no knowledge that Johnny was involved in this Policy.

17 It should be noted at this juncture that at the top of the proposal form for the Policy, the words "Liberty Insurance Pte Ltd" are printed, with "Jewellers' Block Insurance arranged by Aon Insurance Agencies Pte Ltd" beneath. On the insurance policy schedule itself, the defendant's logo and contact details are listed on top, while the Policy's "Account" was listed as Aon.

18 However, in Johnny's affidavit, he explained that he had been informed by the defendant's manager in 2003 that all Jewellers' Block Policies had to go through Aon as part of the defendant's company policy.

19 In my view, it does not appear to be overtly sinister that Aon was listed on the proposal form and on the policy schedule itself. It was submitted by plaintiff's counsel that Aon were insurance brokers who were at liberty to sell products from different insurance companies to clients. Aon was thus the broker for the defendant in respect of Jewellery Block Policies, as the defendant was unable to deal with these policies directly. However, to my mind, this has no bearing as to whether Johnny was indeed the defendant's agent in this particular Policy. From the affidavits filed by both the plaintiff and the defendant, it is clear that the plaintiff contacted only Johnny when it came to matters relating to the Policy. The plaintiff did not contact any representative from Aon, and neither has the defendant submitted any names of representatives from Aon who would be the proper agent of the defendant for this Policy instead. In fact, as earlier mentioned, the allegation that Aon was the agent of the defendants and not Johnny was not pleaded in the defence at all.

20 The defendant's counsel also submitted that Johnny was in fact the agent for the plaintiff as Johnny had placed policies for the plaintiff with other insurance companies other than the defendant. The defendant's counsel relied on *National Employers' Mutual General Insurance Association Ltd v Globe Trawlers Pte Ltd* [1991] 1 SLR(R) 550 ("*National Employers'*") in putting forth the submission that as the agent in that case was also an agent of other insurance companies, they were therefore the respondent's agent and not the insurer's agent.

21 I found this case to be unhelpful in the present circumstances. Firstly, the agent in *National*

Employers' was in fact also the brokers. Secondly, the case did not stand for the proposition that an agent who was also a commission agent of other insurance companies was in fact the insured's agent. In that case, the brokers were considered to be the insured's agent and not the insurer's agent because the brokers had in fact filled in the proposal form on behalf of the insured - who had approved and signed the form, and there had been a material misdescription. As such the broker was actually the agent of the insured when he had filled in the proposal form.

22 As there is no similar contention here that Johnny had filled in the proposal form on behalf of the plaintiff, and there is no issue of material misdescription, I have difficulty in viewing Johnny as the agent of the plaintiff and not the defendant, when his name card clearly shows otherwise. I am thus of the opinion that Johnny was the agent of the defendant

Could Johnny's knowledge be imputed to the defendant?

23 As Johnny was *prima facie* the agent of the defendant with apparent authority, it is trite law that his knowledge ought rightfully to be imputed to the defendant. It is clear that Johnny has ostensible authority from his principal, the defendant, to execute his duties, which included procuring and effecting insurance policies. Following the authority of *Ayrey v British Legal and United Provident Assurance Co Ltd* [1918] 1 KB 137 and *United Oriental Assurance Sdn Bhd Kuantan v W.M. Mazzarol (The Melanie)* [1984] 1 MLJ 260, it is obvious that where it is reasonable for the insured to assume that the communication to the agent is equivalent to a communication to the insurance company's office, the knowledge which the agent has would be taken to be the knowledge of the company.

24 In an exhibit in Lim's affidavit, Johnny confirmed that he did not notify the defendant or Aon of the loan shark incidents as he felt they were irrelevant and that the making of a police report was sufficient. However I find that this is immaterial in the present circumstances, as whether or not Johnny had communicated this information to the defendant, the issue at hand is whether Johnny's knowledge could be sufficiently imputed to the defendant.

25 In my view, when the plaintiff informed Johnny of the loan shark activities on 23 October 2009, the defendant would be presumed in law to have had knowledge of the same as Johnny had ostensible authority to receive this information.

26 Additionally, when I asked the defendant's counsel if disclosure to a representative of Aon (despite the fact that no Aon representative has been singled out as handling the Policy) would constitute sufficient disclosure to the defendant, the defendant's counsel said that it would not and sufficient notice would only be through the proposal form.

27 I am unable to accept this defence. This would make it quite impossible for an insured to inform the insurers of any significant changes regarding their policy which occurred after the proposal form has been signed as neither informing the insurance agent nor the insurance broker would be deemed sufficient.

28 What is even more alarming is the fact that a registered agent with a valid name card issued by a insurance company and who had handled all matters relating to a particular policy; can be denied to be the agent of the same insurance company based on a technicality – that the policy form itself stated the name of an insurance broker company whom the insured had no form of contact with. Assuming the defendant's incredible defence was correct, all the plaintiff's dealings with Johnny over the last six years were futile as the defendant had "no knowledge" that Johnny was involved, and also "did not know of his existence", as stated in the defendant's show cause affidavit. However Johnny had procured and effected all of the plaintiff's policies as well as collected the cheque for the

premium on behalf of the defendant. It would certainly come as a shock to any ordinary man who had paid a hefty premium so as to obtain a peace of mind on the occurrence of any contingency that their policy was void, as the agent whom they had dealt with did not technically exist.

29 In my judgment, Johnny's knowledge of the loan shark activities when informed by Lim, constituted knowledge on the part of the defendant.

Was there, in any event, material non-disclosure on the part of the plaintiffs?

30 The fact that Lim had voluntarily informed the defendant's loss adjustors of the previous loan shark activities at the Insured Premises is inconsistent with the behaviour of one who was trying to conceal these activities, as is the defendant's assertion. The simple explanation for Lim's voluntary detrimental disclosure could only be that Lim was of the opinion that the defendant had prior knowledge of the loan shark activities through its agent, Johnny.

31 Nevertheless, the defendant contends that the plaintiff ought to have disclosed its knowledge of the loan shark activities at the Insured Premises on the proposal form itself. Part 6H of the proposal form provides:

H. Are there any other circumstances within your knowledge or opinion not already disclosed, affecting or likely to affect the proposed insurance?	H. Not to our knowledge.

32 The defendant pointed out that the proposal form was dated 13 October 2009 and 16 November 2009 on the last page. By 16 November 2009, the plaintiff would already have had known of the first loan shark harassment, which occurred earlier on 23 October 2009. As such, it was a material non-disclosure on the plaintiff's part when it answered "not to our knowledge".

33 However, the plaintiff's copy of the proposal form annexed to their written submissions evinced only one date – 13 October 2009. When the defendant's counsel pointed out that there were in fact two dates on the defendant's copy, the plaintiff's counsel appeared genuinely perplexed. Both dates are found on the last page of the proposal form - where the Lim's signature can be found, together with the plaintiff's stamp. The 13 October 2009 date is beneath the plaintiff's stamp and the 16 November 2009 date is squeezed into a tiny gap between the printed word "Date" on the form and the plaintiff's stamp.

34 Neither counsel could explain this discrepancy adequately to the court. In fact, the plaintiff's counsel was only aware of the existence of the second date at the hearing as he was not alerted to it in the defendant's submissions, pleadings or affidavits.

35 The inclusion of the later date – 16 November 2009, appears extremely shady and looks like an afterthought. This is especially so given the very narrow space in which the date was squeezed into. It is also illogical that the proposal form should bear two dates. Further, the plaintiff had no knowledge of this additional date and the plaintiff's copy showed only the earlier date despite the fact that both copies were supposed to be identical. In my view, this is an exceptionally dubious defence. However, as neither counsel could explain the discrepancy to me at this stage of the proceedings, I find it impossible for me to grant summary judgment against the defendant without a proper inquiry into the facts. The circumstances surrounding the two dates on the proposals would therefore be a

question of fact which ought necessarily to be tried.

Conclusion

36 In light of the foregoing points, I therefore grant the defendant leave to defend upon the condition that the defendant pays into court, or provides security by way of a banker's guarantee, 70% of the sum of S$857,441.25 (*ie* the sum of $600,208.88), by 8 July 2011, failing which the plaintiff would be at liberty to enter final judgment against the defendant.

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