Mitora Pte Ltd *v* Agritrade International (Pte) Ltd
[2012] SGHC 178

Case Number : Suit No 535 of 2010 (Registrar's Appeals Nos 322 and 323 of 2011)

Decision Date : 30 August 2012

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Walter Ferix Justine and Ravi Muthusamy (Joseph Tan Jude Benny LLP) for the plaintiff; Kelly Yap Ming Kwang, Kamini Thillainathan, Morgan Chng, Low Xiu Hui (Oon & Bazul LLP) for the defendant

Parties : Mitora Pte Ltd — Agritrade International (Pte) Ltd

Civil Procedure – Striking out

30 August 2012

Choo Han Teck J:

1 Suit 535 of 2010 is the plaintiff-appellant's claim against the defendant-respondent for a debt of US$625,000 that was assigned to the plaintiff pursuant to a written assignment dated 9 April 2010 (the "Deed of Assignment") between the plaintiff and Senamas Far East Inc ("Senamas"), a company incorporated in Japan.

2 Pursuant to the orders of the Learned Assistant Registrar ("AR") Sngeeta Devi on 26 May 2011 ("the 26 May 2011 order"), the plaintiff was to file and serve a supplementary list of documents by 10 June 2011 containing the following documents:

(a) All documents, including but not limited to correspondence exchanged between Takeshi Sawanobori and/or Senamas and the defendant, payment vouchers, invoices and receipts, in relation to Senamas' and/or Takeshi Sawanobori's visits to Indonesia;

(b) All correspondence exchanged between Takeshi Sawanobori and/or Senamas and the defendant and/or Taiheiyo Cement Corporation in relation to the shipment on board "MV Clipper Lagoon", including but not limited to email, letters, faxes, SMS and communications sent via instant messaging clients (such as MSN messenger, Windows Live Messenger, Yahoo Messenger, Blackberry Messenger, Googlechat and Skype) (hereinafter referred to as "Instant Messaging Clients");

(c) All correspondence exchanged between Takeshi Sawanobori and/or Senamas and the following companies in relation to the promotion of the sale of the defendant's coal to the Japanese / Korean market, including but not limited to email, letters, faxes, SMS and communications sent via Instant Messaging Clients;

(i) Taihieyo Kouhatsu Inc.;

(ii) Sumitomo Corporation;

(iii) Bussan Sumisho Carbon Energy Co Ltd;

(iv) Eneos (Nippon Oil Corporation);

(v) JOMO (Japan Energy);

(vi) J-Power;

(vii) JFE Shoji Trade Corporation.

(d) All correspondence exchanged between Takeshi Sawanobori and/or Senamas and JFE Trading Co Ltd between 2005 to 2010, including but not limited to email, letters, faxes, SMS and communications sent via Instant Messaging Clients;

(e) Senamas' Income Tax Statements for the years 2005 to 2010;

(f) Senamas' monthly bank statements from April 2005 to April 2010 (both months inclusive);

(g) Senamas' financial statements for the years 2005 to 2010, including but not limited to their financial reports, audited accounts, balance sheets and profit and loss statements;

(h) All documents evidencing the incorporation and/or purposes of incorporation of Senamas, including but not limited to the Memorandum and Articles of Association.

The plaintiff failed to comply with the 26 May 2011 order. Upon the defendant's application in Summons No ("SUM") 2571 of 2011 filed on 13 June 2011 and pursuant to the orders of AR Terence Tan on 15 June 2011, the plaintiff was to file the supplementary list of documents by 20 June 2011, failing which, the Plaintiff's Statement of Claim (Amendment No 1) would be struck out without need for a further order ("the first unless order"). The plaintiff failed to comply fully with the first unless order. Instead, the plaintiff filed SUM 2680 of 2011 on 20 June 2011 (the date before the Statement of Claim (Amendment No 1) would have been struck out) requesting for an extension of time to comply with the first unless order and for the first unless order to be varied to the extent that discovery as regards the documents enumerated at paragraphs 2(e) to 2(h) be dispensed with.

3 On 29 June 2011, AR Lim Jian Yi dismissed the plaintiff's application to vary the first unless order, but granted the plaintiff an extension of time until 4 July 2011 to comply with the first unless order, failing which the plaintiff's Statement of Claim (Amendment No 1) would be struck out without need for a further order and judgment would be entered on the defendant's Counterclaim ("the second unless order"). The plaintiff failed to comply with the second unless order. Instead, on 8 July 2011, the plaintiff filed SUM 2997 of 2011 requesting for the defendant's Counterclaim to be struck out under O 18 r 19 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) and/or under the inherent jurisdiction of the Court. On 19 July 2011, the defendant filed SUM 3159 of 2011 requesting for the plaintiff's Statement of Claim (Amendment No 2) to be struck out and judgment to be entered against the plaintiff for the defendant's Counterclaim. On 15 September 2011 (more than two months beyond the extension of time given in the second unless order), the plaintiff filed SUM 4115 of 2011 requesting for an extension of time to comply with the first and second unless orders. These three applications were heard by AR Shaun Leong.

4 On 6 October 2011, AR Shaun Leong allowed the defendant's application in SUM 3159 of 2011 and ordered that the plaintiff's third and fourth Supplementary List of Documents filed on 10 August 2011 and 15 September 2011, respectively, to be struck out on the basis that the plaintiff had not sought leave to file them . He consequently dismissed the plaintiff's applications in SUM 2997 of 2011 and SUM 4115 of 2011. On 19 October 2011, the plaintiff filed the following Notices of Appeal against

all three decisions of AR Shaun Leong:

(a) Registrar's Appeal No ("RA") 321 of 2011: Appeal against AR Shaun Leong's decision to dismiss the plaintiff's application in SUM 2997 of 2011;

(b) RA 322 of 2011: Appeal against AR Shaun Leong's decision to allow the defendant's application in SUM 3159 of 2011; and

(c) RA 323 of 2011: Appeal against AR Shaun Leong's decision to dismiss the plaintiff's application in SUM 4115 of 2011.

At the hearing before me on 4 April 2012, the plaintiff had not disclosed two categories of documents, namely (a) Senemas' financial statements for the period between May 2009 and March 2010; and (b) Senemas' income tax statements from May 2009 to March 2010 (collectively referred to as the "outstanding documents"). The plaintiff explained that they needed to get the outstanding documents from one Mr Takeshi Sawanobori ("Mr Takeshi"), a director of Senemas, who was in Japan. As a final opportunity to redeem itself, I ordered that the plaintiff produce the outstanding documents by 9 May 2012 and adjourned the hearing to 16 May 2012.

5 At the resumed hearing on 16 May 2012, the plaintiff had still not produced Senemas' financial statements. Although the plaintiff had produced the relevant income tax statements in its affidavit dated 9 May 2012, the disclosure was not proper because only the English translated version of the income tax statements were exhibited. The original documents in Japanese were not disclosed. I therefore ordered the plaintiff to file all the remaining outstanding documents by 22 May 2012 and further adjourned the hearing to 23 May 2012. At the hearing on 23 May 2012, the defendant brought to the Court's attention that in relation to two of the plaintiff's bank accounts, the plaintiff had only disclosed the relevant bank passbooks and not the proper financial statements. The bank passbooks were unsatisfactory because they may not be accurate if they are not updated. Having given the plaintiff enough chances to comply with their discovery obligations, I allowed the defendant to amend its submissions to include the new point raised and also allowed the plaintiff to file a short reply.

6 At the hearing on 25 June 2012, I dismissed RA 322 of 2011 and RA 323 of 2011. In my view, the plaintiff's multiple breaches of the various court orders, including the two unless orders, were intentional and contumelious. The plaintiff was unable to satisfy me that there were extraneous circumstances that prevented it from complying with the court orders. Under Clause 4 of the Deed of Assignment, Senamas was expressly obliged to assist the plaintiff in enforcing the debt. If the plaintiff had difficulties getting the necessary documents from Mr Takeshi, it could and should have taken steps to enforce its rights under the Deed of Assignment against Mr Takeshi. It therefore did not lie in the plaintiff's mouth to say that the documents requested for were not in its possession, custody or power. Further, in relation to the various documents that the plaintiff failed to disclose, the plaintiff's excuses to the Court had included inadvertence and misunderstanding of the court orders. I was also unable to accept the plaintiff's excuse that their solicitors were unable to handle the voluminous documents which were in Japanese. In my view, the plaintiff's repeated failure to comply with court orders justified AR Shaun's order striking out its claim. I therefore dismissed RA 322 of 2011 and RA 323 of 2011. As for RA 321 of 2011, I granted the plaintiff's application to have it withdrawn.

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