Parakou Shipping Pte Ltd (in liquidation) *v* Liu Cheng Chan and others [2014] SGHC 244

Case Number : Suit No 434 of 2014 (Summons No 2012 of 2014)

Decision Date : 21 November 2014

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Kenneth Lim, Fay Fong Shi-Ting and Chua Xin Ying (Allen & Gledhill LLP) for the plaintiff; Lawrence Tan, Wong Tjen Wee and Foo Juyuan (Eldan Law LLP) for the first and second defendants; Siraj Omar and Prema Latha (Premier Law LLC) for the third and fourth defendants; Sim Chong and Kate Loo (JLC Advisors LLP) for the fifth and sixth defendants.

Parties : Parakou Shipping Pte Ltd (in liquidation) — Liu Cheng Chan and others

Civil Procedure – Mareva injunctions

21 November 2014 Judgment reserved.

Choo Han Teck J:

1 The plaintiff, Parakou Shipping Pte Ltd, is a shipping company that went into liquidation. The liquidation initially began as a voluntary liquidation but Galsworthy Singapore Pte Ltd ("Galsworthy"), who was a major creditor of the plaintiff took over the liquidation and appointed the present liquidators in place of the ones nominated by the plaintiff in its initial voluntary winding up application.

2 The first and second defendants are husband and wife. They come from Hong Kong although they now have Singapore identity cards. The third defendant is their son. The fourth defendant is a friend of the third defendant and was from China but he too now carries a Singapore identity card. The third and fourth defendants took over the plaintiff from the first and second defendants on 22 December 2008. The fifth and sixth defendants are companies owned by the first, second and third defendants.

3 Galsworthy commenced arbitration proceedings against the plaintiff and on 31 August 2010 received the arbitration award in its favour. The arbitrators then delivered the second award on quantum on 13 May 2011 awarding a sum of US$45m to Galsworthy.

4 The plaintiff (in liquidation) commenced proceedings in this suit against the defendant on 23 April 2014 and on the same day applied by summons for a freezing order against the defendants. The summons was served on the plaintiff on 25 April 2014 and on 29 April 2014 the parties appeared before me. I granted an interim injunction pending the *inter partes* hearing of the summons. The defendants were represented by counsel at the 29 April 2014 proceedings. The parties returned on 27 October 2014 before me for the *inter parte* arguments.

5 Mr Kenneth Lim, counsel for the plaintiff submitted that there is a sum of $635,000 (which was from the proceeds of sale of the plaintiff's last remaining vessels) now deposited with JLC Advisors LLP, the solicitors for the third and fourth defendants, as stakeholders. The first and second defendants also own 2G Bishope Gate, a house valued between $30 to $40 million. The plaintiff fears that these assets might be dissipated and thus prays that the court orders an injunction against the

defendants enjoining them from disposing of the assets. Mr Lim submitted that there is a real risk of dissipation on the basis of the defendants' conduct.

6 Mr Lim submitted that when he appeared for the plaintiff in an *ex parte* hearing on 29 April 2014, Mr Sim Chong appeared for the fifth and sixth defendants and informed the court that there were still four vessels belonging to the fifth defendant. However, unknown to the plaintiff and, it seems the fifth defendant's counsel at the time, one of the four vessels had already been sold and the fifth defendant was in the process of selling the other three vessels.

7 Mr Sim Chong defended the fifth defendant's position, submitting that the vessels were not sold suddenly or surreptitiously, but gradually and openly over several years. He submitted that the plaintiff's liquidators had interviewed the directors and did not act until they filed this writ. Mr Kenneth Lim responded by stating that they filed the writ and the application promptly enough, as soon as they realised that the defendants appear to dissipate the assets.

8 As further indication of the dissipation of assets, Mr Lim submitted the income earning contracts for vessel management made between the plaintiff and companies controlled by the defendants were cancelled. The management (and thus the income) of the vessels under contract were thus diverted from the plaintiff to the six defendants.

9 Mr Siraj Omar, counsel for the third and fourth defendants, made a strenuous and spirited argument against this application. He submitted that the sale of the vessels and the cancellation of the ship management contracts were all part of the legitimate decision to restructure the companies within the group. He pointed out that the process started before the Galsworthy arbitration. He submitted that the third defendant is a reputable businessman from Hong Kong, and that both the third and fourth defendants have been cooperating fully with the liquidators.

10 The defendants' collective position is that the individual defendants are reputable persons and the disposal of assets was part of a group re-structuring process. Therefore, it was argued, there is no reason to find that the defendants were dissipating assets to the plaintiff's detriment. They also claimed that the plaintiff had taken too long before commencing action and making this application. I am satisfied that the delay was due to the lack of funds, and that the liquidators had acted with sufficient diligence in the circumstances.

11 It seems that just looking at the chronology of events, the action of the defendants, singularly and in concert, were carried out with the intention of preventing Galsworthy from getting paid the arbitral award that it had won against the plaintiff. The argument that all the transfers of assets and contracts were part of a corporate restructuring does not seem plausible. How would all these transfers help the group's business generally, and the plaintiff in particular? The answer seems obvious – to prevent whatever that is left from going to Galsworthy. I am thus satisfied that unless prevented, the assets of the plaintiff will be dissipated to the detriment of Galsworthy.

12 The plaintiff's application is therefore allowed. The costs of this application shall be costs in the cause. The parties have the liberty to apply.

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