IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 214

Suit No 221 of 2016
(Registrar's Appeal No 140 of 2017)

Between

BGC PARTNERS (SINGAPORE) LIMITED

… Plaintiff

And

KEVIN TAN WEE HIONG

… Defendant

A N D

Between

KEVIN TAN WEE HIONG

… Plaintiff in counterclaim

And

(1) BGC PARTNERS (SINGAPORE) LIMITED
(2) BGC HOLDINGS, L.P.

… Defendants in counterclaim

GROUNDS OF DECISION

[Civil Procedure] — [Service out of jurisdiction]
[Conflict of Laws] — [Stay of court proceedings]

Version No 1: 27 Oct 2020 (22:40 hrs)

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BGC Partners (Singapore) Limited
v
Kevin Tan Wee Hiong

[2017] SGHC 214

High Court — Suit No 221 of 2016 (Registrar's Appeal 140 of 2017)
Choo Han Teck J
29 June 2017; 13 July 2017

29 August 2017

Choo Han Teck J:

1 The undisputed facts are set out in the AR's judgment.

2 Briefly, there are three agreements between the parties. The first is an employment contract between the plaintiff, BGC Singapore and the defendant, Kevin ("Employment Agreement"). The second is a Cash Advance and Distribution Agreement and Promissory Note ("Cash AD Agreement") between BGC Singapore and Kevin. Both are governed by Singapore law and each contains a non-exclusive jurisdiction clause in favour of Singapore. The third is a partnership agreement between the second defendant in the counterclaim, BGC Holdings and Kevin ("Partnership Agreement"). It is governed by Delaware law and has an exclusive jurisdiction clause in favour of the Delaware courts.

3 Suit No 221 of 2016 ("S 221/2016") was brought by BGC Singapore against Kevin for the repayment of an outstanding loan under the Cash AD Agreement. Kevin counterclaimed against BGC Singapore as well as BGC Holdings for wrongful termination of his employment under the Employment Agreement and wrongful forfeiture of his partnership units under the Partnership Agreement respectively. As BGC Holdings is a limited partnership formed under the laws of the state of Delaware in the United States of America, Kevin sought leave for service out of jurisdiction on BGC Holdings for his counterclaim. The AR accepted that there are exceptional circumstances amounting to strong cause as to why the court should exercise its discretion in Kevin's favour and granted leave for service out of jurisdiction despite the existence of the exclusive jurisdiction clause in the Partnership Agreement.

4 This is BGC Holdings' appeal against the AR's decision. The court must first be satisfied that there is a good arguable case that the claim falls within one of the grounds set out in O 11, r 1 of the Rules of Court (Cap 322, R5, 2014 Rev Ed), second, that there is a serious issue to be tried and third, that Singapore is the proper forum, before granting leave for service out of jurisdiction. The present appeal turns on whether Kevin has shown Singapore to be the proper forum for his counterclaim against BGC Holdings, in light of the exclusive jurisdiction clause in favour of Delaware in the Partnership Agreement.

5 Counsel for BGC Holdings, Mr Tay, submitted that Singapore is not the proper forum for the counterclaim against BGC Holdings as the exclusive jurisdiction clause in the Partnership Agreement compels the parties to sue in Delaware. He argued that the clause ought to be upheld unless there are exceptional circumstances amounting to strong cause to allow a breach, that there are no such exceptional circumstances in the present case, and Kevin's

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counterclaim against BGC Holdings should therefore be brought in Delaware. Consequently, leave for service out of jurisdiction should not be granted. Alternatively, he submitted that a stay of proceedings in Singapore could be granted to avoid inconsistent findings between the Delaware and Singapore courts.

6 It was not disputed that there is an exclusive jurisdiction clause in favour of Delaware in the Partnership Agreement and that Kevin's counterclaim against BGC Holdings falls within the said clause. Kevin's case is that although there is an exclusive jurisdiction clause, the court retains discretion to exercise jurisdiction over BGC Holdings if strong cause is shown. Counsel for Kevin, Ms Ganga, listed several factors that the court should consider and urged a finding that there was strong cause to refuse holding him to the exclusive jurisdiction clause. It was agreed that the burden of showing strong cause is on Kevin.

7 I dismissed the appeal. The Singapore court has jurisdiction over BGC Holdings in exceptional circumstances amounting to strong cause notwithstanding the exclusive jurisdiction clause. I agreed with the AR that Singapore has been shown to be the proper forum for Kevin's counterclaim against BGC Holdings and leave to serve out of jurisdiction should be granted. BGC Holdings sought leave to appeal against my decision. I set out the grounds for my decision below.

8 At the heart of the three claims before the Singapore court is the termination of Kevin as an employee of BGC Singapore. The claim for recovery of loan monies was initiated by BGC Singapore, who elected to sue Kevin in

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Singapore. In paragraph 10 of its Statement of Claim, BGC Singapore pleaded that they are entitled to their claim because

> … upon [Kevin] ceasing to be a *partner* in BGC Holdings on 9 November 2015, the remainder of the Loan amount… became immediately due and payable by [Kevin] to [BGC Singapore].
>
> [emphasis added]

BGC Singapore's claim arose out of Kevin's termination as a partner, which is governed by the Partnership Agreement. Kevin's termination as a partner of BGC Holdings follows upon Kevin's dismissal as an employee of BGC Singapore. Counsel for the appellant, Mr Tay, did not suggest that there was another independent basis on which the Partnership Agreement was terminated. The main issues in dispute would therefore involve the circumstances under which Kevin was terminated as an employee. Ms Ganga submitted that these are best resolved in Singapore where Kevin was employed and carried out his duties. I agree. BGC Singapore must have thought so in commencing the suit in Singapore against Kevin even though its claim is inherently linked to the termination of Kevin's status as a partner. In order to resolve the dispute in the claim brought by BGC Singapore, the Singapore courts has to make a finding as to whether Kevin had been terminated as a partner. It would thus be in the interests of justice for Kevin's counterclaim in relation to his termination as a partner to also be heard in Singapore.

9 BGC Holdings submitted that Kevin's counterclaims against BGC Singapore and BGC Holdings are separate and distinct. Undoubtedly, the remedies sought are different—as Mr Tay pointed out, Kevin is seeking, *inter alia,* recovery of his salary and cash bonus in his counterclaim against BGC Singapore and an account of his partnership units in his counterclaim against BGC Holdings. But for the reasons above, the AR was right in finding that the

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three claims are intimately connected and cannot be meaningfully separated. Given that the findings of fact and law in relation to Kevin's dismissal are crucial to all three claims, there is a risk of inconsistent finding between the Delaware court and Singapore court should there be parallel proceedings and thus create undue problems for all. The interests of justice will be best served if the three claims are heard in Singapore. It was also argued that the allocation of jurisdiction between the Delaware courts for disputes in relation to the Partnership Agreement and the Singapore courts for employment-related is commercially rational. Even if that is so, there remains a clear risk of a multiplicity of proceedings and inconsistent findings between Delaware and Singapore for the three claims as pleaded.

10 Mr Tay submitted that the Delaware courts would follow the finding of the Singapore court in relation to the termination of Kevin as a partner under the Delaware doctrine of "issue preclusion". He cited the appellant's expert, Mr Donald Parsons' opinion in support. In response, Ms Ganga highlighted that Mr Parsons only went as far as to say that the Delaware courts may take into account the findings of the Singapore courts. Indeed, at paragraph 9.5 of his expert report, Mr Parsons opined that

> [i]f there are any subsequent proceedings brought by Kevin Tan and BHC Holdings under the Partnership Agreement, the Delaware Courts may *take into account* the findings of the Singapore Courts in relation to the [issue of Kevin Tan's dismissal of employment by BGC Singapore under the Employment Agreement], under the doctrines of claim preclusion or issue preclusion in Delaware law…
>
> [emphasis added]

Contrary to Mr Tay's understanding, Mr Parsons is not saying that the findings of the Singapore court would invariably be accepted and followed.

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11 In my opinion, the considerations above justify granting leave for service out of jurisdiction on BGC Holdings in order for the three claims to be heard together in Singapore. The factors cited by counsel for both parties, as listed in *Golden Shore Transportation Pte Ltd v UCO Bank* [2004] 1 SLR(R) 6 (at [33]), even if found to be in favour of BGC Holdings, would not affect my finding that there is strong cause to refuse holding Kevin to the exclusive jurisdiction clause in the Partnership Agreement. In particular, BGC Holdings submitted that the fact that the governing law in the Partnership Agreement is Delaware law should be a weighty consideration. In my view, it is inadequate in showing that Singapore is not the proper forum. The Singapore court can determine issues of Delaware law, as pointed out by BGC Holdings in its written submissions (at [55]).

12 For the reasons above, I dismissed the appeal and affirmed the AR's decision to grant leave for service out of jurisdiction. I ordered that costs here and below be in the cause.

- Sgd -
Choo Han Teck
Judge

Ganga Avadiar and Eileen Yeo Yi Ling (Advocatus Law LLP) for the plaintiff in counterclaim;
Tay Yong Seng, Alexander Yeo and Ong Chin Kiat (Allen & Gledhill LLP) for the 2nd defendant in counterclaim.

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