IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 223

Suit No 79 of 2018
(HC/RAs No 155, 178 and 179 of 2018)

Between

Epoch Minerals Pte Ltd

… Plaintiff

And

(1) Raffles Asset Management (S) Pte Ltd
(2) AKS Consultants Pte Ltd
(3) Kamil Bin Jumat
(4) Gangadhara Brhmendra Srikanth Maroju

… Defendants

GROUNDS OF DECISION

[Civil Procedure] — [Stay of proceedings] — [Case management]

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Epoch Minerals Pte Ltd
v
Raffles Asset Management (S) Pte Ltd and others

[2018] SGHC 223

High Court — Suit No 79 of 2018 (Registrar's Appeals No 155, 178 and 179 of 2018)
Choo Han Teck J
24 July 2018

8 October 2018

Choo Han Teck J:

1 The plaintiff is a company carrying on a business in coal mining. It claims that they employed the fourth defendant, Gangadhara Brhmendra Srikanth Maroju ("Gangadhara") in August 2016 to help find investors who would be interested in the plaintiff's business. A month later, Gangadhara told the plaintiff that he found a company described as "AMC" which was interested in investing in the plaintiff.

2 Gangadhara represented that AMC was prepared to invest US$5m, but that the plaintiff had to pay US$300,000 to AMC, later revealed to be the second defendant, AKS Consultants Pte Ltd ("AKS"). Of that sum, US$100,000 was for the costs of a due diligence report, and US$200,000 was to be retained by AKS as "margin money". Further, the plaintiff was also required to pay a commission of US$100,000 to Gangadhara.

3 The plaintiff claims that after it paid those sums of money, Gangadhara told it that the investment could be doubled to US$10m if the margin money was similarly doubled.

4 The oral discussions were eventually reflected in a document entitled "Term Sheet" which was signed by the plaintiff in acceptance. The first defendant, Raffles Asset Management (S) Pte Ltd ("Raffles") was the countersigning party. It was signed on behalf of Raffles by the third defendant, Kamil bin Jumat ("Kamil").

5 Gangadhara and AKS were not signatories to the Term Sheet. The Term Sheet contained an arbitration clause. This is crucial because the plaintiff says that Kamil and Gangadhara were at the time partners, and it is therefore suing all defendants for conspiracy to defraud. The plaintiff says that after paying US$600,000, no money came in from Raffles by way of investment as agreed.

6 Initially, Raffles and Kamil applied for a stay of proceedings in favour of arbitration. The assistant registrar granted a stay in respect of the action against Raffles but declined to grant a stay in respect of Kamil since he was only a representative of Raffles and could not invoke the arbitration clause. Since then, AKS and Gangadhara also applied to stay. All three submitted that since a stay had been granted against Raffles, this action against the rest of the defendants should also be stayed (pending the arbitration) on the grounds of effective case management.

7 It seems to me that AKS and Gangadhara made a belated application for stay because the AR below noted the problem of casting AKS and Gangadhara

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

adrift should the action be stayed against Kamil and not AKS and Gangadhara who did not apply to stay.

8 The real and only issue now is whether a stay should be granted against the three defendants who are not bound by the arbitration clause. The second to fourth defendants say that a stay should be granted as a matter of effective case management. What their counsel argue, was that it would be inconvenient to have the arbitration proceedings against Raffles proceed in parallel to the court proceedings against AKS, Kamil and Gangadhara. They raise arguments as to inconvenience to witnesses and the extra costs involved, and, of course, a potential contradictory finding of facts. Counsel relied on *Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals* [2016] 1 SLR 373 ("*Tomolugen*"), as authority that "case management" justifies a stay of proceedings in favour of arbitration.

9 "Case management" is not a legal principle. It is just a descriptive term for the administrative part of a court's function, namely, the management of the cases. That includes placing cases in order of priority, fixing the dates for and the number of days for trial. It is not intended to affect what is properly called "judicial discretion" or judicial decisions. Judicial discretion and decisions must be based on legal principles or rules and regulations.

10 When a plaintiff is claiming that the four defendants had conspired to cause him harm, he is entitled to pursue his claim in court against them even when the court had granted one of them a stay in favour of arbitration. It is true that a potential conflict in the findings of fact may arise between the court and the arbitrator, but that alone is not a reason to stymie the plaintiff against the three defendants who are not concerned in the arbitration. My views here are

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

largely what the Court of Appeal had already expressed in *Tomolugen*. That decision does not represent what counsel for the defendants claim it holds.

11 Furthermore, whatever the decision between the plaintiff and Raffles, the arbitrator's decision will not bind the plaintiff or the other defendants in this action. There is no good reason to delay the action by granting a stay so that the other defendants take their seats as spectators to watch the arbitration proceedings. Justice is best served in this case by having the action proceed forthwith and expeditiously.

12 I therefore dismissed the appeals with costs in the cause.

- Sgd -
Choo Han Teck
Judge

Jeremy Gan Eng Tong (Rajah & Tann Singapore LLP) for the plaintiff;
Valerie Seow Wei-Li and Daryl Ong Hock Chye (LawCraft LLC) for the second defendant;
Debby Ratnasari and Derek Kang Yu Hsien (Ho & Wee LLP) for the third defendant;
Tan Lee Jane and Christopher Chong Chi Chuin (cLegal LLC) for the fourth defendant.

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