IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 08

Civil Appeal No 92 of 2018

Between

(1) PT Humpuss Intermoda Transportasi
(2) PT Humpuss Transportasi Kimia

… *Appellants*

And

Humpuss Sea Transport Pte Ltd (in compulsory liquidation)

… *Respondent*

EX TEMPORE JUDGMENT

[Civil Procedure] — [Vacation of trial dates] — [Reopening of trial]

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PT Humpuss Intermoda Transportasi and another
v
Humpuss Sea Transport Pte Ltd (in compulsory liquidation)

[2019] SGCA 08

Court of Appeal — Civil Appeal No 92 of 2018
Tay Yong Kwang JA and Belinda Ang Saw Ean J
25 January 2019

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Tay Yong Kwang JA (delivering the judgment of the court *ex tempore*):

1 Whatever the terminology used for the test to be satisfied in an application to vacate trial dates, whether the applicant needs to show "strong compelling grounds" (as indicated in the Court of Appeal decision in *Su Sh-Hsyu v Wee Yue Chew* [2007] 3 SLR(R) 673 at [39]) or "compelling or cogent reasons" (as advocated by the appellants relying on Hong Kong's Court of Final Appeal's decision in *TWG Tea Co Pte Ltd & Another v Tsit Wing (Hong Kong) Co Ltd & Ors* [2015] HKCU 2008) and the English Court of Appeal's succinct decision in *Unilever Computer Services Ltd v Tiger Leasing S.A.* [1983] 1 WLR 856), the essence is that the applicant must show good reasons to move the Court to exercise its discretion in the applicant's favour. We note that the two cases cited by the appellants used the term "cogent reason(s)", not "compelling or cogent reasons". Mr Chentil Kumarasingam, counsel for the appellants, explains that he is submitting that the legal test should be pegged lower at "compelling reasons" rather than "strong compelling grounds", *ie*, the word

"strong" should be dropped from the test. In any case, we see no reason to depart from the test established by our Court of Appeal's decision.

2 The appellants are two Indonesian companies. They are the defendants in this action. On the first day of trial before the Judicial Commissioner ("JC") in the High Court, they were absent and unrepresented. The trial commenced, the plaintiff/respondent's two witnesses were called and the respondent then closed its case and directions were given by the JC for written submissions to be made. A few days later and before the deadline for the written submissions passed, the appellants applied to the JC to vacate the trial of the action, to re-open the respondent's case, to recall the respondent's two witnesses for cross-examination and to allow the appellants thereafter to present their case and call their witnesses.

3 Why were the appellants absent and unrepresented when the trial commenced on 10 April 2018? The reason was that their fourth firm of solicitors ("solicitors no. 4") had applied on 22 March 2018, less than three weeks before the trial started, to discharge itself from further acting for the appellants and was granted the order of discharge by the JC on 26 March 2018. The JC directed solicitors no. 4 to inform the appellants about the discharge and that the appellants were to ensure that any new solicitors appointed would be prepared for the trial as scheduled. By that time, the trial was only about two weeks away. The JC's directions were meant obviously to convey the message to the appellants that there would be no vacation of the trial dates on the ground that they would need time to engage new solicitors. As foreshadowed by the JC, the appellants submitted before her and now before us that they had insufficient time to appoint new solicitors and even if appointed, the new solicitors would not be able to prepare for the trial at such short notice.

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4 What led to this state of affairs in which solicitors no. 4 had to apply to be discharged as the appellants' solicitors so close to the trial dates? In September 2017, the trial dates from 10 to 27 April 2018 were confirmed by the registry. On 25 January 2018, solicitors no. 4 asked for $150,000 to be deposited with them. On 5 March 2018, when solicitors no. 4 had not received the money requested, they informed the appellants that they might have to discharge themselves as solicitors if the money was not received by 9 March 2018. On 6 March 2018, Mr Theo Lekatompessy ("Mr TL"), the first appellant's President-Director, was hospitalised in Indonesia because of a stroke (described as "transient cerebral ischaemic attack, unspecified"). He was discharged from hospital on 13 March 2018 and was given a letter explaining his medical condition and stating that he needed one month to recover. As stated above, on 26 March 2018, solicitors no. 4 were discharged as the appellants' solicitors. On the same day, the first appellant's in-house legal counsel met the appellants' present solicitors. On that day, Mr TL travelled to Kuala Lumpur for medical treatment and returned to Jakarta on 27 March 2018. On 29 March 2018, he travelled again to Kuala Lumpur for medical treatment and returned to Jakarta on 1 April 2018.

5 On 10 April 2018, the trial commenced with only the respondent present in Court. No one turned up in Court to explain the appellants' absence. Neither the respondent nor the Court received any correspondence from the appellants to explain why they were not in Court. The JC proceeded to hear the respondent's evidence. Two witnesses were called. The respondent then closed its case. Upon the respondent's solicitors' request, the JC gave directions for the filing of submissions by 4 May 2018 with her decision to be given on 7 May 2018.

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6 One day after the trial commenced, on 11 April 2018, Mr TL took a flight to Singapore to meet the appellants' present solicitors. The next day, the present solicitors asked the respondent's solicitors whether they would agree to have the trial vacated. The respondent's solicitors refused the request.

7 On 16 April 2018, the appellants' present solicitors filed an application (SUMS 1790/2018) to vacate the trial dates in the High Court. On 7 May 2018, the JC gave her decision dismissing the application with costs fixed at $9,000 plus disbursements to be paid by the appellants to the respondent. On 16 May 2018, the JC gave the appellants leave to appeal to this Court and directed that the costs for the application for leave before her would be costs in this appeal. She also indicated that she will give further directions on the filing of closing submissions after the Court of Appeal has given its decision on the appeal.

8 From the above summary of the course of the proceedings, it is evident that the appellants were given ample notice about the trial dates for this action which was commenced on 18 August 2014 and which the appellants took active part in. Yet, on 25 January 2018 when solicitors no. 4 asked for further funds to be deposited, the appellants seemed nonchalant and had to be reminded on 5 March 2018. The appellants say they were considering a further change of solicitors around this period. No good reason has been given to us to explain the appellants' need to change solicitors so close to the trial dates.

9 It was submitted by the appellants that the decision to appoint new solicitors could not be taken between 6 March 2018 (when Mr TL was hospitalised) and 11 April 2018 when Mr TL was well enough to take a flight from Indonesia to Singapore. This was apparently because Mr TL was the sole decision-maker in this matter. However, as the JC noted, the appellants were

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able to give instructions to solicitors no. 4 between 12 and 14 March 2018 to inform the Court that they would object to the original trial Judge assigned to hear the trial because he was involved in the case while he was still in private practice. Further, on 2 April 2018, Mr TL was able to sign the announcement for the appellants' general meetings. On 9 April 2018, Mr TL signed on the submission of the 2017 annual report of the first appellant to the authorities. It was therefore apparent that either Mr TL was quite capable of giving instructions for the action despite his medical condition or at least someone else in the appellants was also giving directions. Further, the period between 25 January 2018 when solicitors no. 4 asked for the $150,000 deposit and 5 March 2018 when solicitors no. 4 sent the reminder was more than five weeks before Mr TL's hospitalisation. It appeared that nothing was done during that period to resolve the issue about legal representation. However, all this leads us again to the pivotal question – why was there a need to change solicitors at such a late stage in the action?

10 On the above facts, the appellants have failed to show strong compelling grounds for the trial dates to be vacated and for the trial to start afresh. In our opinion, the appellants would fail even if the proper test is, as they submit, "compelling or cogent reasons", assuming there is a material difference between the two formulations of the test. The appellants are in the position that they are in because they chose not to be serious about the trial dates despite the claim against them being in the region of US$170m and despite their assertion that the claim had important commercial implications for them.

11 We therefore see no reason to interfere with the JC's exercise of her discretion. We dismiss the appeal with costs. The parties are to make an

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appointment to attend before the JC for further directions in relation to this action.

12 After considering the parties' submissions on costs, we fix the costs of this appeal at $20,000 inclusive of disbursements to be paid by the appellants to the respondent. This amount also includes the costs for the application before the JC for leave to appeal to this Court.

Tay Yong Kwang
Judge of Appeal

Belinda Ang Saw Ean
Judge

Chenthil Kumar Kumarasingam, Jade Chia Kia Huang and Oh Teng Chew, Dennis (Hu Tingchao) (Oon & Bazul LLP) for the appellants; David Chan, Zhang Yiting, Lin Ruizi and Mark Yeo (Shook Lin & Bok LLP) for the respondent.

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