JR Marine Systems Pte Ltd *v* Rankine Bernadette Adeline and another [2013] SGHC 277

Case Number : Suit No 782 of 2012 (Registrar's Appeal No 24 of 2013)

Decision Date : 24 December 2013

Tribunal/Court : High Court

Coram : Andrew Ang J

Counsel Name(s) : Uthayasurian s/o Sidambaram (Surian & Partners) for the appellant; Tan Shien Loon Lawrence and Poonaam Bai d/o Ramakrishnan Gnanasekaran (Eldan Law LLP) for the first respondent; Tnee Zixian, Keith (Tan Kok Quan Partnership) on watching brief for the second respondent.

Parties : JR Marine Systems Pte Ltd — Rankine Bernadette Adeline and another

Civil Procedure – Striking out

24 December 2013

Andrew Ang J:

Introduction

1 This was an appeal against the decision of the learned assistant registrar Teo Guan Kee ("AR Teo") on 7 January 2013 allowing the application of Rankine Bernadette Adeline (the "First Respondent") in Summons No 5744 of 2012 ("SUM 5744/2012") to strike out the statement of claim filed by JR Marine Systems Pte Ltd (the "Appellant"). After hearing the parties on 6 September 2013, I dismissed the appeal. The Appellant has appealed against my decision and I now set out the grounds of my decision.

Background facts

2 On 19 September 2012, the Appellant commenced Suit No 782 of 2012 ("Suit 782/2012"), praying for: (a) a declaration that it was the rightful owner of one million shares (the "Shares") in Berlian Ferries Pte Ltd (the "Second Respondent"); and (b) injunctions restraining the Respondents from dealing with the Shares. In its statement of claim, the Appellant pleaded that the First Respondent held the Shares on resulting trust for the Appellant.

3 On 23 October 2012, the First Respondent filed her defence. It stated that the Shares were a gift from one Amin Shah and that the First Respondent was the legal and beneficial owner of the Shares. The First Respondent also pleaded that the Appellant was estopped from asserting its ownership in the Shares because she had previously obtained a declaration that she was the legal and beneficial owner of the Shares. This declaration was made on 29 June 2012 pursuant to Summons No 5495 of 2011 in Suit No 266 of 2010 ("Suit 266/2010"). In addition, the First Respondent pleaded that the Appellant had knowledge of the judgment obtained by her against Chenet Finance Limited ("Chenet") in Suit No 971 of 2009 ("Suit 971/2009") where she had also been declared as the legal and beneficial owner of the Shares.

4 It would be appropriate at this point to provide a brief overview of the two related suits mentioned above. Sometime in 2009, the First Respondent discovered that the Shares which were in

her name had been transferred without her authority to Chenet. She therefore brought a claim against Chenet in Suit 971/2009 for the return of the Shares to her and applied for summary judgment. Kan Ting Chiu J granted Chenet leave to defend on the condition that Chenet furnished security of $200,000. Chenet failed to do so and judgment was entered in favour of the First Respondent on 31 January 2011. The Appellant was not a party to Suit 971/2009.

5 Meanwhile, prior to judgment in Suit 971/2009 being obtained by the First Respondent, the Appellant had commenced Suit 266/2010 against, *inter alia*, Chenet for the return of two million shares in the Second Respondent. The two million shares sought by the Appellant included the First Respondent's Shares then held by Chenet pursuant to the unauthorised transfers referred to in [4] above. Chenet, a preponderant majority shareholder of the Appellant, filed its defence admitting that the Appellant was the owner of the two million shares and the Appellant subsequently obtained judgment against Chenet for the two million shares on 29 October 2010. The First Respondent then intervened to set aside the judgment. She succeeded in doing so and obtained a declaration that she was the legal and beneficial owner of the Shares on 29 June 2012.

6 Returning to the present matter, the First Respondent applied on 7 November 2012, in SUM 5744/2012, to strike out the Appellant's statement of claim. At the hearing of SUM 5744/2012 on 29 November 2012, counsel for the Appellant at the hearing, Mr Boey Swee Siang ("Mr Boey"), sought an adjournment because he had only been appointed the day before the hearing. AR Teo granted the adjournment.

7 On 7 January 2013, AR Teo granted the orders sought in SUM 5744/2012 and ordered costs of $7,000 and reasonable disbursements to the First Respondent. The Appellant then filed Registrar's Appeal No 24 of 2013 ("RA 24/2013") against AR Teo's decision.

8 At the hearing of RA 24/2013 on 13 March 2013 before Tay Yong Kwang J, the Appellant's counsel at that time, Mr Navin Joseph Lobo, sought an adjournment. He explained at the hearing that his firm could no longer act for the Appellant and that "[o]ne of the reasons [for not being able to act] is conflict". He also explained that this change of circumstances had happened in "the last one week". After hearing the parties, Tay J granted the adjournment.

9 On 5 September 2013, one day before the re-scheduled hearing of RA 24/2013, counsel for the Appellant, Mr Uthayasurian Sidambaram ("Mr Surian"), filed Summons No 4636 of 2013 ("SUM 4636/2013") to discharge himself as the Appellant's solicitor for the reason that he was unable or not prepared to act in accordance with certain instructions that he had been given by the Appellant that same day.

10 On 6 September 2013, I heard SUM 4636/2013 together with RA 24/2013. I did not allow Mr Surian's application to discharge himself at this late stage because there had already been inordinate delay in these proceedings. I was of the view that the Appellant was responsible in the main for the delay. If the Appellant had intended to give certain instructions to Mr Surian, this should have been done much earlier and not on the eve of the hearing date. Giving instructions to Mr Surian in a timely manner would have allowed the Appellant to appoint another counsel in the event that Mr Surian declined to act in accordance with the Appellant's instructions. Moreover, this was not the first time that the Appellant had attempted to adjourn the proceedings in this matter by a change of solicitors. I agreed with the First Respondent's submission that the changing of solicitors was merely a ploy by the Appellant to delay proceedings and had been used on other occasions (*viz*, on 29 November 2012 and 7 January 2013 before AR Teo and on 13 March 2013 before Tay J). In the circumstances, I disallowed the application in SUM 4636/2013.

11 Mr Surian then proceeded to present his client's case using the written submissions dated 19 February 2013 prepared by the Appellant's previous solicitor, Mr Boey. Mr Surian did not prepare any written submissions of his own. Given that Mr Surian had been appointed to act for the Appellant on 16 April 2013 and that he had only been informed by the Appellant on 5 September 2013 of certain instructions that he was unwilling to carry out, one would have expected Mr Surian to have prepared his own set of submissions for the hearing on 6 September 2013. His failure to do so raised doubts about the genuineness of his appointment and fortified my view that the Appellant's multiple changes of solicitors were merely a ploy to delay the proceedings.

The decision below

12 AR Teo ordered the striking out of the Appellant's statement of claim and dismissed the action because the proceedings constituted an abuse of process under O 18 r 19(1)(*d*) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("Rules of Court"). In his view, the issue of resulting trust was intimately connected with the beneficial ownership of the Shares and ought to have been raised in the earlier proceedings brought by the Appellant.

Appellant's case

13 The Appellant's position was that the First Respondent was at all material times holding the Shares on resulting trust for the Appellant because she did not furnish any consideration for the Shares. In support of this position, Mr Surian argued that the Appellant was not estopped from bringing the present suit because the present suit had no identity of subject matter with Suit 971/2009 or Suit 266/2010. Mr Surian elaborated that the issue of whether the First Respondent held the Shares on resulting trust for the Appellant had not been distinctly determined by the court at any point of time.

14 Mr Surian also submitted that there were special circumstances rendering it unjust for the court to estop the Appellant from continuing the present suit. It was alleged that after the conclusion of Suit 266/2010, the Appellant "uncovered" new evidence that showed that the First Respondent did not furnish any consideration for the Shares.

The First Respondent's case

15 Counsel for the First Respondent, Mr Lawrence Tan ("Mr Tan"), argued that the Appellant's claim was frivolous and vexatious because it did not represent a *bona fide* claim. The current proceedings were part of a grander scheme by the Appellant and the Second Respondent to deprive the First Respondent of her rights to the Shares. Further, the declarations in Suit 266/2010 and Suit 971/2009 had not been appealed against and the current proceedings were an attempt to circumvent those declarations. Mr Tan also argued that the current proceedings were an abuse of the court process because the Appellant was trying to re-litigate issues that had already been decided.

My decision

16 The Court of Appeal in *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin* [1997] 3 SLR(R) 649 made the following pertinent observations regarding O 18 r 19(1)(*d*) of the Rules of Court (at [22]):

> The term, "abuse of the process of the Court", in O 18 r 19(1)(*d*), has been given a wide interpretation by the courts. It includes considerations of public policy and the interests of justice. This term signifies that the process of the court must be used *bona fide* and properly and

must not be abused. The court will prevent the improper use of its machinery. It will prevent the judicial process from being used as a means of vexation and oppression in the process of litigation. The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed and will depend on all the relevant circumstances of the case. A type of conduct which has been judicially acknowledged as an abuse of process is the bringing of an action for a collateral purpose, as was raised by the respondents. In *Lonrho plc v Fayed (No 5)* [1993] 1 WLR 1489, Stuart-Smith LJ stated that, if an action was not brought *bona fide* for the purpose of obtaining relief but for some other ulterior or collateral purpose, it might be struck out as an abuse of the process of the court.

17 In my judgment, the Appellant's institution of the present proceedings was an abuse of process under O 18 r 19(1)(*d*) of the Rules of Court. The First Respondent was declared to be the legal and beneficial owner of the shares in both Suit 266/2010 and Suit 971/2009. Despite these declarations, the Appellant sought, in these proceedings, a contradictory declaration that it was the rightful owner of the Shares. To this end, the Appellant asserted that the First Respondent was holding the Shares on resulting trust for the Appellant. In truth, I found that the present proceedings were no more than an attempt by the Appellant to re-litigate and nullify the declarations made in Suit 266/2010 and Suit 971/2009.

18 If the Appellant had intended to assert the existence of a resulting trust, this issue should have been raised earlier in Suit 266/2010 because it was intimately connected with the issue of the legal and beneficial ownership of the Shares. However, the Appellant failed to do so. In fact, the Appellant failed to respond to the First Respondent's claim on this particular issue when she claimed in her affidavit that she was not holding the Shares on trust for anyone (see [8] of the First Respondent's affidavit dated 2 December 2011). Furthermore, the Appellant did not appeal the order declaring the First Respondent as the legal and beneficial owner of the shares in Suit 266/2010. Having exhausted the proper avenues for challenging the declaration in Suit 266/2010, the Appellant sought to re-open and re-litigate the issue of the ownership of the Shares by instituting the present proceedings. I found that this was plainly a disingenuous attempt to circumvent the declaration made in Suit 266/2010 and an improper use of the court's machinery.

19 I also did not think that the new evidence uncovered by the Appellant advanced its case in any meaningful way. The Appellant argued that the corporate secretarial documents of the Second Respondent revealed that the First Respondent did not furnish any consideration for the Shares. Quite to the contrary, the minutes of an extraordinary general meeting held on 26 March 2004 (Pandian Paradesimudaliar's affidavit dated 19 September 2012, exhibit P-3, p 4) showed that the First Respondent *had*, in fact, furnished a sum of S$1m for the Shares.

20 Similarly, the evidence of the share transfer in 2005 did not advance the Appellant's case because it had already been determined in Suit 971/2009 that the acquisition of the Shares by Chenet pursuant to this share transfer was invalid and void and that the First Respondent remained the legal and beneficial owner of the Shares. The next piece of new evidence relied on by the Appellant was a statutory declaration made by one Amin Shah dated 13 September 2012 stating that he had never given the Shares to the First Respondent. I attributed little weight to this belated declaration because it could have been made earlier to challenge the First Respondent's claim to the Shares in Suit 266/2010. However, no explanation was forthcoming for the appearance of this document at this late stage. To my mind, therefore, the declaration appeared to be another belated attempt by the Appellant to prevent the rightful return of the Shares to the First Respondent.

21 I have one final observation. The Appellant's conduct in this matter and its related proceedings was consistent with the First Respondent's claim that the Appellant was trying, at every turn, to

prevent the First Respondent from receiving the Shares that she was rightfully entitled to. I also took a dim view of the Appellant's multiple and belated changes of solicitors that appeared to be calculated to delay these proceedings and prevent the return of the Shares to the First Respondent. I was satisfied that the Appellant's present suit was vexatious and an abuse of process within the meaning of O 18 r 19(1)(*d*) of the Rules of Court.

Conclusion

22 For the foregoing reasons, I dismissed the Appellant's appeal and ordered costs of the appeal to the First Respondent to be taxed unless agreed.