The Bank of East Asia Ltd *v* Quah Su-Ling
[2014] SGHC 52

Case Number : Suit No 1113 of 2013 (Registrar's Appeals No 62 and 63 of 2014)

Decision Date : 28 March 2014

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Rebecca Chew and Lynette Koh Mei Ping (Rajah & Tann LLP) for the plaintiff; Michael Palmer and Audrey Lim (Quahe Woo & Palmer LLC) for the defendant.

Parties : The Bank of East Asia Ltd — Quah Su-Ling

Civil Procedure – Stay of proceedings

Civil Procedure – Summary judgment

28 March 2014

Choo Han Teck J:

1 The plaintiff is a bank. The defendant, who is the Chief Executive Officer and Executive Director of IPCO International Ltd, was a customer of the plaintiff. Sometime in January and March 2013, the plaintiff granted the defendant a share margin facility of up to S$5,000,000 ("the Facility"). The full terms of their contract are set out in the affidavit of 6 January 2014 of Heng Juay Yong, the head of Trade and Loan Services Department of the plaintiff.

2 On 7 and 8 October 2013 the plaintiff gave notice calling upon the margin debt incurred by the defendant under the Facility. The defendant failed to pay. On 13 November 2013 the plaintiff's solicitors, Rajah & Tann LLP, served a letter of demand for the outstanding debt of S$1,819,888 as at 11 November 2013. The defendant failed to pay and the plaintiff commenced action in this suit. It served the Writ of Summons and Statement of Claim on the defendant on 4 December 2013. The defendant filed her defence on 30 December 2013. The plaintiff then took out an application for summary judgment on 6 January 2014 ("the Summary Judgment Application"), following which, on 20 January 2014, the defendant took out an application to stay these proceedings ("the Stay Application").

3 Both the Summary Judgment Application and the Stay Application were heard before assistant registrar Mak Sushan Melissa ("AR Mak") on 25 February 2014. AR Mak dealt with the Stay Application first. She dismissed the defendant's application, as she found the defendant had not demonstrated any exceptional circumstances as to why the stay was necessary to prevent abuse of process or to ensure justice to the parties. She allowed the Summary Judgment Application as she held that the defendant had not demonstrated a *bona fide* defence. She granted judgment for the sum of S$1,832,070.53 as at 2 December 2013, and default interest on that sum at the rate of the plaintiff's prevailing prime lending rate plus 6% per annum from 3 December 2013 until the date of payment. She also ordered costs for both applications to be paid by the defendant to the plaintiff. The defendant appealed against both orders of AR Mak. I dismissed both appeals.

4 Mr Michael Palmer ("Mr Palmer"), the defendant's counsel raised substantially the same arguments on appeal as he did before AR Mak. In the Stay Appeal, the defendant argued that this

court should exercise its inherent jurisdiction, pursuant to O 92 r 4 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("ROC"), to grant a stay of proceedings for three reasons. First, the defendant was in no frame of mind to defend these proceedings. Second, the defendant was not able to make payment of the judgment debt given an injunction order that is in force over her assets. Third, as a corollary to the second point, it would be unconscionable for the plaintiff to demand payment of the judgment debt despite knowing that the defendant is under an injunction order. In the Summary Judgment Appeal, the defendant argued that she should be given leave to defend as there are "issues or questions that ought to be tried", within meaning of O 14 r 3(1) of the ROC.

5 Ms Rebecca Chew ("Ms Chew"), counsel for the plaintiff, proposed that the Summary Judgment Appeal be dealt with first. Mr Palmer, counsel for the defendant, did not object. In fact, he rightly conceded that the defendant had no defence to the plaintiff's claim. Nevertheless, in his written submissions, he argued that there were special circumstances in this case – namely the defendant's inability to repay the sums owed to the plaintiff – from which arose "issues or questions that ought to be tried".

6 I agreed with both parties in that there was truly no defence in this case. I am not persuaded by Mr Palmer's submission that there are "issues or questions that ought to be tried". This presumably stems from a misunderstanding of O 14 r 3. As AR Mak pointed out, the ambit of "issues or questions that ought to be tried" in O 14 r 3(1) should not include a party's practical inability to pay if judgment is entered against it. Summary judgment was rightly ordered.

7 The question remained, whether an order for a stay of proceedings should be made. Given my finding on the Summary Judgment Appeal, I note it is procedurally inappropriate to order a stay of proceedings when judgment has been made. The appropriate order may have been a stay pending appeal. In any case, I would not have allowed such an application given that the chances of a successful appeal, in my view, were poor.

8 However, based on the submissions made by Mr Palmer in support of the defendant's appeal against AR Mak's refusal to stay proceedings, it was clear that the appropriate application to make would have been an application for a stay of execution.

9 Notwithstanding my decision to dismiss the defendant's application for a stay of proceedings, I will deal briefly with Mr Palmer's contentions in the Stay Appeal. His three points (at [4]) centre on the difficult financial position the defendant now finds herself in. To understand how she arrived at this state, her recent investment history needs to be revisited. Mr Palmer explained that in February 2013, the defendant opened a trading account with Goldman Sachs in London and also with Interactive Brokers LLC, an online trading company. The defendant invested up to S$120m in shares in three companies, namely, Asiasons Capital Ltd, LionGold Corp Ltd, and Blumont Group. She alleged that on 2 October 2013, she was suddenly notified by Goldman Sachs to repay S$61m being the margin call on her trades in the three companies. She alleged that Goldman Sachs gave her one and a half hours to make payment.

10 The defendant was unable to satisfy the margin call and Goldman Sachs began to sell off her shares in the three companies deposited by way of collateral. Interactive Brokers LLC also made a similar margin call on the defendant about the same time. In the event, the defendant was unable to repay Goldman Sachs and Interactive Brokers LLC.

11 The defendant sued Goldman Sachs in London and they counter-claimed the sum of S$71m due and owing to them from her trades in the three companies. Interactive Brokers LLC obtained an *ex parte* freezing order against the defendant on 11 November 2013, for her assets up to the value of

around S$10.1m. This order, from Vinodh Coomaraswamy J ("Vinodh J"), was to remain in force until "[a]n arbitration tribunal(s) constituted in arbitration(s) between the Plaintiff and the Defendants in accordance with the AAA Rules makes an order which expressly relates to the whole or part of this order" or "further order". Interactive Brokers LLC subsequently obtained an interim award from Emergency Arbitrator Kap-You Kim, dated 11 February 2014. This award was made in Singapore. The award contained terms similar to Vinodh J's freezing order, to the effect that she was still precluded from dealing with her assets up to the value of around S$10.1m. The interim award is to remain in force until the emergency arbitrator, or arbitral tribunal, makes any contrary order.

12 Unlike her position regarding the plaintiff's claim in this action, the defendant denies any liability to Goldman Sachs and Interactive Brokers LLC's claims. The submission advanced by Mr Palmer on her behalf was that if the proceedings in this action were not stayed, the defendant would be bankrupted and have no money with which to satisfy her debt to the plaintiff. Both the plaintiff and defendant are in a difficult situation, but if there is any scope for an amicable resolution, it cannot be achieved by adopting the wrong procedure, namely, to stay these proceedings (instead of applying for a stay of execution).

13 I do not see how a stay of proceedings can be justified in the face of a clear and unpaid debt. Mr Palmer submitted that the stay would enable the defendant to negotiate with the plaintiff for an acceptable payment schedule. While I do not doubt the viability of such negotiations, the proper application is not for a stay of proceedings. Rather, the defendant should have applied for a stay of execution. However, this was not done before the assistant registrar. I thus dismissed both appeals but granted the defendant one week to apply for a stay of execution before an assistant registrar.