Verona Capital Pty Ltd *v* Ramba Energy West Jambi Ltd
[2014] SGHC 88

Case Number : Suit No 553 of 2012 (Registrar's Appeal No 87 of 2014)

Decision Date : 29 April 2014

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Suresh s/o Damodara (Damodara Hazra LLP) for the plaintiff; Conrad Melville Campos and Lee Wei Qi (RHTLaw Taylor Wessing LLP) for the defendant.

Parties : Verona Capital Pty Ltd — Ramba Energy West Jambi Ltd

Civil procedure – Costs – Security

29 April 2014

Choo Han Teck J:

1 This was an appeal against the decision of assistant registrar Melissa Mak Sushan ("AR Mak") to refuse additional security for costs in the sum of $360,000. AR Mak only allowed an additional $60,000, bringing the total sum of security ordered against the plaintiff to $150,000. The defendant was unsatisfied, and appealed. The crux of the defendant's case before me was that the main claim was of a complexity that justified the high amount of security sought. I disagree. I turn first to the background facts to show why this is so.

2 The plaintiff is an investment company incorporated in Australia. The defendant is a company incorporated in the British Virgin Islands and is a member of the "Ramba" group of companies of which Ramba Energy Ltd ("Ramba") is the parent company. The defendant had an agreement in June 2011 with the Indonesian company PT Pertamina EP under which the defendant has a 20-year right to conduct oil and gas exploration in an area known as the "West Jambi Block", which is located in the northern part of South Sumatra.

3 On 25 July 2011, the plaintiff and defendant entered into an agreement in which the plaintiff invested in, and advanced various amounts of money to, the defendant ("the Agreement"). In return, the defendant was to assist in the location of sources of oil and gas in the West Jambi Block (although the precise role of the defendant, pursuant to the agreement, was in dispute). The plaintiff claimed that it entered into the Agreement on the basis of a slide presentation by the defendant. It was only later that the plaintiff realised that the defendant had (allegedly) made important misrepresentations during this slide presentation. As such, the plaintiff filed a suit based on the defendant's alleged misrepresentation and claimed, amongst other things, the amounts of money that had already been paid to the defendant, in the sum of US$1,498,598. The writ of summons was filed on 2 July 2012.

4 In the main claim, the plaintiff averred that the defendant had shown a slide presentation to the plaintiff in April 2011 in order to induce the plaintiff to sign the Agreement. The presentation conveyed certain information about a Dutch well named "Tuba Obi-8". Specifically, on one slide, it was stated that Tuba Obi-8 "penetrated fracture basement and encountered gas", and on another slide, that Tuba Obi-8 has a 270 metre column of gas. These were attractive prospects. The plaintiff repeatedly asked the defendant for the original Tuba Obi-8 well reports to no avail. Nevertheless, as

the Agreement provided (in clauses 9.1 and 9.3) that representations and warranties made by the defendant to the plaintiff in the defendant's slide presentation were true, the plaintiff signed the Agreement.

5 Since the defendant did not furnish the original well reports, the plaintiff went to the offices of the official petroleum data repository for Indonesia on 5 October 2011. There, the plaintiff discovered that there was a further well report on another well, "Tuba Obi-11", also in the West Jambi Block. The plaintiff purchased both the Tuba Obi-8 and 11 reports. On examining the two reports, the plaintiff realised that – contrary to the defendant's representations – the areas in question had poor or no prospects for gas. The plaintiff thus sued the defendant for misrepresentation.

6 The defence was twofold. First, the defendant argued that the slides shown to the plaintiff carried various disclaimers, including the warning that the presentation could not be relied upon by the plaintiff in connection with its decision to enter into the Agreement.

7 Second, the defendant averred that by a "Term Sheet" executed in May 2011, two months before the signing of the Agreement, the plaintiff was obliged to "carry out its own due diligence, and was not to rely on the [defendant's] workings and assumptions". Also, the defendant argued that, pursuant to clauses 9.6.4 and 9.6.5 of the Agreement, the plaintiff accepted that it "shall be solely responsible for making its own assessment and decision on [entering into the Agreement]" and that it "has not relied on or been induced [to enter into the Agreement] by any representation or warranty other than expressly set forth in [the Agreement]".

8 On 16 July 2013, the defendant obtained an order of court under Summons No 2337 of 2013 in which the plaintiff was ordered to provide $90,000 as security for costs up to the exchange of affidavits of evidence-in-chief. Subsequent to that, the defendant applied, in February – March 2014, for further security comprising $60,000 up to the exchange of affidavits of evidence-in-chief, $200,000 up to the disposal of trial, and $100,000 for disbursements. The total amount asked for was thus $360,000 in addition to the $90,000 already ordered. On 3 March 2014, AR Mak allowed a further sum of $60,000 up to the disposal of trial, making the total security for costs $150,000. The defendant was dissatisfied and appealed.

9 Before me, Mr Campos, counsel for the defendant, referred to his written submissions in which he argued that the evidence is highly technical and could not be understood without the assistance of an expert. Hence, the defendant was justified in asking for a further $260,000 in security for costs and a further $100,000 being disbursements which will go mainly to the payment of the expert's fees.

10 It seems that Mr Campos is intent on expanding the litigation beyond the pleadings (as amended). I say this because the case as it stands seems straightforward. The plaintiff's case is simply that the defendant's representations of gas in the West Jambi Block were untrue; and further, that the falsity was discovered when the plaintiff obtained the well reports on 5 October 2011. The defendant does not deny that it never had possession of those reports when it showed the slide presentation to the plaintiff.

11 Simply put, the issues in the main claim can be settled by answering the following questions:

1. Did the defendant represent that there were gas reserves in the stated areas?

2. Did the defendant induce the plaintiff by referring to the well reports in support of the representation in Question 1?

3. Did the plaintiff obtain true copies of the well reports?

4. Did the well reports contradict the representations made by the defendant?

The other issues related to the interpretation of the terms of the contract and oral evidence, and if needed, the oral evidence would have to come from the persons present at the said presentation and the execution of the investment agreement. In any case, these issues would not necessitate expert evidence or testimony.

12 Contrary to what Mr Campos submitted, none of the matters raised in the pleadings or his submissions indicate that the case was exceptionally complex and could not be understood without the expert evidence. Mr Campos himself conceded that expert evidence would only be necessary should all four questions in [11] be answered positively. He argued that only then would it become necessary for the defendant to show that, despite the non-production of the well reports, the West Jambi Block did indeed have gas potential. I find this an odd proposition. If the defendant did not have the well reports to begin with, it cannot now engage experts to reconstruct what would have been in those documents. It would be sufficient for the defendant to show that the plaintiff's documents were not the well reports that the defendants referred to (if at all). Further, if the plaintiff is relying on the well reports that it obtained from a third party, the burden is on it to show that those were in fact the documents and that there were no others (that the defendant could have possibly relied on in its slide presentation). Whether subsequently discovered evidence justifying the defendant's representations ought to be permitted is a question for the trial judge. However, for the purposes of determining the quantum of security for costs, the court is entitled to take the relevance and utility of that exercise into account.

13 The experts to be consulted and witnesses to be interviewed, as explained in Mr Campos' submissions, seem to me to be extensive investigative work. Such work may indeed be useful and necessary, but the provision for security for costs is not a provision to insure the defendant for all costs, and certainly not for costs of all investigations carried out by the defendant.

14 The court has to bear in mind four things when ordering security for costs. First, at the stage of application or appeal, however weak the plaintiff's main claim may be, the defendant has not yet succeeded (in the main claim). Second, security for costs is a provision of comfort and not an indemnity of costs awarded should the defendant succeed in the main claim. Security for costs is intended to prevent a successful defendant from being left with no recourse to costs and so the security is provided to guarantee that the defendant would at least obtain a certain sum should the plaintiff be unable to pay. Third, the court should not order costs that are so exorbitant that the order inhibits and stymies the plaintiff from pursuing its main claim. Fourth, security should not be provided if it would only be used substantially to assist the defendant in its counterclaim against the plaintiff, especially where the counterclaim and defence "were launched from the same platform" (see *Jurong Town Corp v Wishing Star Ltd* [2004] 2 SLR(R) 427 at [19] – [21]). In the main claim in this case, the defendant has a counterclaim for non-performance of the rest of the plaintiff's obligations under the Agreement. Those obligations were not performed because of the plaintiff's claim that it was wrongfully induced to sign the Agreement. As such, the defendant's counterclaim and defence were indeed launched from the same platform.

15 In my view, the initial sum of $90,000 awarded as security for costs was already adequate up to the stage of the exchange of affidavits of evidence-in-chief. For security up to disposal of trial, in this case, any sum between $90,000 and $120,000 (in total) would have been fair. AR Mak was generous when she ordered $150,000 and granted leave to apply.

16 There was nothing exceptional about this case to warrant special consideration and for all the reasons above, the appeal was thus dismissed. I have ordered costs of the appeal to be costs in the cause.