PSONS Ltd *v* UPF Holding Pte Ltd and others
[2014] SGHC 93

Case Number : Suit No 750 of 2013 (Summons No 1727 of 2014)

Decision Date : 06 May 2014

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Pradeep Pillai and Ng Wenling (Shook Lin & Bok LLP) for the plaintiff; P Padman and Aaron Wham (Tan Kok Quan Partnership) for the defendants.

Parties : PSONS Ltd — UPF Holding Pte Ltd and others

Equity – Remedies – Injunction

Civil Procedure – Appeals – Leave

6 May 2014

Choo Han Teck J:

1 This was an application by the plaintiff for leave to appeal to the Court of Appeal against my decision given on 31 March 2014 in Summons No 5068 of 2013, where I allowed the defendants' application to set aside a mareva injunction. I had originally granted the mareva injunction on 29 August 2013 pursuant to Summons No 4333 of 2013. The injunction prohibited the disposal of the defendants' assets in Singapore up to the value of US$900,000. I eventually set aside the mareva injunction as I learnt, when parties appeared before me on 17 March 2014, that the plaintiff was likely to have knowledge of the unscrupulous activities that it alleged the defendants were involved in. I thus held that it should not be allowed to avail to the equitable remedy of a mareva injunction as it did not come to court with clean hands, and accordingly set aside the mareva injunction. The plaintiff, dissatisfied, applied for leave to appeal. I heard parties on this point on 28 April 2014, and was of the view that leave to appeal should not be granted. These are my reasons.

2 The main claim in this case concerned a deal between the plaintiff, a mining company, and the first defendant, a trading company involved in the wood and pulp business. Parties signed a Memorandum of Understanding, under which the plaintiff paid about US$841,350 to the first defendant, and in return, the first defendant was to obtain a mining licence for the plaintiff in Laos. The mining licence was never obtained – notwithstanding many further attempts at negotiation. On 20 August 2013, the plaintiff commenced Suit No 750 of 2013 in the High Court. It pleaded two causes of action, namely, breach of contract and the tort of deceit.

3 Returning now to the present application, Mr Pradeep, counsel for the plaintiff, made two main arguments in support of the plaintiff's plea for leave to appeal. First, that I had made a *prima facie* case of error in setting aside the mareva injunction. Second, that there were questions of further importance upon which further argument, and a decision of the Court of Appeal, would be to the advantage of the public.

4 First, on the *prima facie* case of error, Mr Pradeep argued that I had made errors both of law and fact. He submitted that when I relied on the "clean hands doctrine", I did not consider the factor that the "conduct complained of must have an immediate and necessary relation to the equity sued

for". He emphasised that the clean hands doctrine does not require that the plaintiff "must be blameless in all ways" (see *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292 at [225]). Mr Pradeep further argued that, in this case, notwithstanding any blameworthy conduct on the part of the plaintiff (which he denies, hence his argument on *prima facie* case of error of fact) the plaintiff had not offended the clean hands doctrine as the alleged conduct did not have an "immediate and necessary relation to the equity sued for" (see *Dering v Earl of Winchelsea* [1775-1802] All ER Rep 140). I accept the plaintiff's proposition, that the conduct must have some nexus to the equity sought. This had been taken into account in my decision on 31 March 2014. In this case, the equity sought was a mareva injunction – which is ancillary to a main claim. It would be wholly artificial to view the mareva injunction in isolation, and consider conduct only immediately relating to one party's desire to preserve the assets of another. Rather, the conduct must surely extend to what transpired behind the main claim that justifies the granting of the mareva injunction. In this case, the main claim concerned the agreements between the plaintiff and the first defendant, which included the Memorandum of Understanding. As such, the plaintiff's conduct relating to these agreements must surely have an "immediate and necessary relation to the equity sued for".

5 Coming to the conduct of the plaintiff, I found (in my decision on 31 March 2014) that the plaintiff was implicated in all the wrongdoings it seemed to accuse the defendants of. Mr Pradeep vehemently denied this, and argued that I had made clear errors of fact in my finding. I disagree. In my judgment, the conduct of the plaintiff was plain from the following factors:

a. the shady nature of the Memorandum of Understanding (contrary to the plaintiff's view that it was a "comprehensive document which [was] 8 pages long and which [set] out the obligations of each party in detail");

b. the fact that the first defendant had no experience in the mining industry and yet was chosen by the plaintiff as a business partner (which the plaintiff attempted to justify as legitimate given the first defendant's promise of its relations in Laos);

c. the fact that the plaintiff continued dealing with the first defendant despite having discovered the latter had committed forgery of an official document (which was denied by the defendants, and which the plaintiff responded to by citing a letter it had sent to the first defendant soon after having discovered the forgery, in which it stated it would be forced to instigate civil and criminal proceedings against the defendants); and

d. the sheer sums of money involved – in excess of US$800,000 (which the plaintiff allegedly thought would be used for administrative costs).

It is apparent, not only from the four aspects of the case referred to above but also the plaintiff's corresponding attempts at what seemed to be embellishing, that the plaintiff's conduct throughout this episode – from its dealings with the defendants to its arguments in court – was questionable at the very least.

6 Mr Pradeep attempted to analogise the plaintiff's tie up with the first defendant to an instance of "mere lobbying" – a practice more commonly observed in other jurisdictions. I did not find this analogy helpful. On the contrary, resort to this term, steeped in ambiguity (lobbying is notably oft used as a euphemism for corruption), served to create further doubt as to the plaintiff's position. When I asked Mr Pradeep regarding the vast sums of money involved, he could not explain why such sums were warranted. Instead, he argued that, regardless of the quantum, the plaintiff could not possibly have known the monies would have been used for bribes as, pursuant to the agreement it had with the first defendant, all monies would be returned should the licence not be obtained. If it is

the plaintiff's case that it was wholly comforted by the notion that it would get its money bank in the event of failure, and not at all concerned about the exact use to which the $841,350 would be put by the first defendant, then it seems the plaintiff was finding comfort in being wilfully ignorant.

7 Mr Pradeep's second argument in justifying leave to appeal was that a decision of the Court of Appeal on this matter would be to the advantage of the public. Specifically, counsel argued that "whether alleged knowledge and/or encouragement of illicit activity (which is denied) and which is unrelated to the main claim ought to be sufficient to deny crucial injunctive relief to the allegedly offending party". As mentioned earlier, that is not how I characterised this case. This case was straightforward – it involved an agreement, forgery, and bribes. Some elements were denied by either party, some by both. These are matters rightly for trial. At this interlocutory stage, I had only the submissions of the parties to make a preliminary finding on the conduct of either party. I reached this finding on 31 March 2014, that the negative conduct of the plaintiff which – if it was not clear then then it should be now – bore an immediate and necessary relation to the equity sued for, should preclude it from equitable relief. It is unlikely that the public would be advantaged in any way by this matter escalating to the Court of Appeal at this stage.

8 As such, I have dismissed the plaintiff's application for leave to appeal.

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