

Ding Horng Industrial Pte Ltd v Sulzer Singapore Pte Ltd
[2019] SGHC 160

Case Number : HC/Originating Summons No 182 of 2019 (HC/Registrar's Appeal No 59 of 2019 and HC/Summons No 2047 of 2019)
Decision Date : 04 July 2019
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Amos Cai Enhuai and Ernest Wong Changyan (Yuen Law LLC) for plaintiff; Anparasan s/o Kamachi and Sumyutha Sivamani (WhiteFern LLC) for defendant.
Parties : Ding Horng Industrial Pte Ltd — Sulzer Singapore Pte Ltd

Civil Procedure – Appeals – Leave

Civil Procedure – Corporate self-representation

4 July 2019

Judgment reserved.

Choo Han Teck J:

1 The plaintiff had a building contract with the defendant and by 2010, the work had been done and as far as the defendant was concerned that was the end of the matter, but the plaintiff claimed that \$1,756,370.59 was still outstanding, a claim that the defendant denied. No action was taken until almost six years later when the plaintiff commenced an action in Suit No 1195 of 2016 against the defendant for payment.

2 The action was eventually fixed for trial on two occasions but each time the trial was vacated because the plaintiff discharged its solicitors and subsequently failed to meet court deadlines or had its director, Madam Liu Yueh Mei (“Madam Liu”) appear without counsel. On the first occasion, it applied to vacate trial dates two days before trial and a fresh date was fixed with ample time for the plaintiff to prepare its case. Instead the plaintiff discharged its second firm of solicitors and, through Madam Liu, applied for Madam Liu to represent the plaintiff at trial. Madam Liu is not an advocate and solicitor of the Singapore Bar. I dismissed the application and directed the plaintiff to obtain legal representation. Madam Liu returned at the next PTC before AR Miyapan Ramu (“AR Ramu”) and told him that both this Court and he were wrong and that she was entitled to represent the plaintiff at trial. The requirement under O 5 r 6(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) that a company must be represented by counsel was explained to her more than once. Nonetheless, the plaintiff was given yet another opportunity to get counsel. AR Ramu directed that if the plaintiff did not do so, the plaintiff’s claim would be struck out. The plaintiff did not engage counsel and so its claim was struck out on 19 September 2018 by AR Ramu.

3 The plaintiff then applied to AR Jacqueline Lee (“AR Lee”) by way of this Originating Summons No 182 of 2019 for an extension of time to file an appeal against AR Ramu’s order. AR Lee dismissed Originating Summons No 182 of 2019 because the plaintiff was still not represented by counsel, and the plaintiff appealed.

4 That appeal came before me and again Madam Liu insisted that she was fully capable of representing the plaintiff at trial. I examined the pleadings and decided that there was insufficient

reason to grant an exemption to the plaintiff. About eight months had passed since I had first directed that the plaintiff must be represented by counsel. Looking at the application afresh, I am fortified in my view that O 5 r 6(2) must be complied with. I have heard Madam Liu on several occasions and am of the view that she should not represent the plaintiff despite her confident claim that she was perfectly capable of doing so. Her submissions were grandiose, diffused, and largely incoherent. I therefore dismissed the plaintiff's appeal on 8 April 2019.

5 The plaintiff then filed Summons No 2047 of 2019 for leave to appeal to the Court of Appeal against my order. I directed that I will hear Summons No 2047 of 2019 only after counsel had been appointed and had filed an affidavit to support the application. Thus the plaintiff engaged Yuen Law LLC and on 1 July 2019, Mr Amos Cai and Mr Ernest Wong appeared on the plaintiff's behalf.

6 Mr Cai's submission was that the plaintiff had not been able to have its day in court because of a series of procedural irregularities, and since there has been no legal ruling that a plaintiff can be denied his trial merely on account of procedure, leave ought to be granted for it to persuade the Court of Appeal to allow it to revive its action. Both Mr Cai and Mr Anparasan, who acts for the defendant, filed their respective submissions in writing.

7 Mr Anparasan gave a reasonably accurate historical account of this matter from the conclusion of the contract, and the beginning of the date of the cause of action to the hearing before me. I am inclined to agree with Mr Anparasan. Mr Cai's submissions overlook the fact that the plaintiff had been given its opportunity for trial but it failed to comply with court deadlines and applied to vacate trial dates on the eve of the trial. It was fortunate to be allowed a second chance but it again spurned that chance when it discharged its counsel and refused to appoint a new one.

8 If there were procedural irregularities, they were all occasioned by the plaintiff, and they were not committed in ignorance or misfortune. They were the result of the plaintiff's deliberate decisions in discharging its lawyers and refusing to engage one — until the matter had gone cold. I agree with Mr Anparasan that the conduct of the plaintiff should not receive sympathy from the court. On the merits, that is, the refusal to have a lawyer represent it, no good reasons had been given. The plaintiff had only latterly begun to accuse its previous solicitors, at least two different firms, of mishandling her case.

9 Unlike an individual who, when he acts in person, represents himself only, the incorporated company is a separate and distinct entity and itself represents diverse interests — shareholders, directors, and itself. The rule in O 5 r 6(2) is to ensure that there will be no unnecessary dispute as to who ought to be entitled to represent the company in legal proceedings involving the company as a litigant. It is a fair and practical rule that admits of rare exceptions. From the affidavits filed and the submissions of the plaintiff's counsel, Mr Cai, I am of the view that this application for leave is without merit. A plaintiff has a right to its day in court but that is not a right in perpetuity. The plaintiff cannot refuse to obey court orders directed to allow it to proceed and then complain that it had not been allowed to proceed. When the law is clear and especially when it had been clearly understood as in this case, it must be obeyed.

10 Leave to appeal is therefore denied. I will hear the question of costs on 9 July 2019.