Govindasamy Supramaniam v Bailey Foreign Holdings Corp and Others [2005] SGHC 199

Case Number : Suit 696/2005, SIC 5086/2005, 5137/2005

Decision Date : 20 October 2005

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Lee Eng Beng and Mark Cheng Wai Yuen (Rajah and Tann) for the plaintiff; Dhillon Dinesh Singh and Rachel Chong Sue-Fen (Wong and Leow LLC) for the first to fourth defendants; The fifth defendant not represented

Parties : Govindasamy Supramaniam — Bailey Foreign Holdings Corp; Adrian Bailey; Mary Bailey; Kevin Bailey; S.E.A. Hydropower Pte Ltd

Civil Procedure – Interim orders – Plaintiff removed as managing director by properly constituted act of company's board of directors – Allegations of serious wrongdoing by both sides – Whether to grant interim mandatory injunction reinstating plaintiff as managing director

1 This was an application by the plaintiff and his son, Sashi Kumar Supramaniam (who is not a party to the proceedings), for a court order directing that they be reinstated as the managing director and executive director respectively, of the fifth defendant company ("the Company"), and various ancillary orders including an order that they be authorised to manage the day-to-day operations of the company. The application was filed on 4 October 2005 and heard on 6 October 2005. I dismissed the application on the following day, 7 October 2005, and the plaintiff has obtained leave for an expedited appeal against my decision.

2 The plaintiff and the first defendant are shareholders of the Company, holding 50% of the shareholding each. The second, third, and fourth defendants are members of the board of directors of the Company. The plaintiff alleged that the second, third and fourth defendants were never involved in the day-to-day operations of the Company whose business is in the manufacturing and trading of hydraulic cylinders in Asia and the Pacific region. The plaintiff sold half of his shares in the Company to the first defendant in March 2002. However, he retained full conduct of the daily operations and management of the Company after the sale of shares to the first defendant. It appeared that the partnership of the plaintiff and the first defendant was a profitable one and the plaintiff had no trouble from the defendants, and *vice versa*, until July or August 2005 when the defendants suspected that the plaintiff was acting against the interests of the Company. There was a meeting scheduled for October 2005 but, according to the plaintiff, the second and third defendants arrived early unannounced on 26 September 2005. The plaintiff described a physical "storming" of the Company by the second and third defendants and the personnel they brought along with them. The plaintiff was thus compelled to relinquish authority from that day. He remained on the board of directors, but that was little comfort to him because his objective was to be reinstated with full powers for the daily management of the Company. It should be noted that although the plaintiff and the first defendant each had 50% of the Company's shares, the first defendant had an option to purchase another 28%.

3 The defendants' case was that they had acted legitimately because the plaintiff had been conducting himself in a manner that was against the interests of the Company. They felt justified in the sudden removal of the plaintiff from his position so that they could stop any further damage to the Company. The details of the allegations of breach of the plaintiff's duties, as a director, to the Company were set out in the affidavits of Kevin Bailey (the fourth defendant) and Dr Narayanamurthy a director of an associate Bailey company in India. The allegations of the defendants and Dr Narayanamurthy were serious ones.

4 Both parties in this application and suit had alleged serious wrongdoing on the part of the other. The plaintiff was the managing director and had the day-to-day conduct of the Company's operations. It was submitted on his behalf that the defendants had no contractual right to remove the plaintiff since cl 7.1 of the Shareholders Agreement did not permit either side, who each had 50% of the shareholding, to remove each other's nominees to the board of directors. The accusations on both sides were serious, and after reading the affidavits I am of the view that it would not be prudent to lean in one direction or the other without a full hearing on the merits. In the circumstances, I had to consider two key issues. First, did the defendants blatantly breach a contractual right in circumstances that warrant an immediate reinstatement of the plaintiff? The defendants satisfied me that the resolutions at the board of directors were passed in accordance with cl 7.4 of the Shareholders Agreement, which required only a simple majority. Furthermore, the plaintiff was not removed as a director. He remains on the board. The plaintiff's chief complaint was that the control of the affairs of the Company passed from him to the defendants absolutely. Whether that was right or wrong is one of the main issues for the trial.

5 Second, when the facts are complicated and involve serious allegations of wrongdoing like that in the present case, and where it will not be prudent to make a call as to which side was in breach, the only way a decision can fairly be made for the resolution of an application for an interim mandatory injunction is to consider the consequences, or, in standard parlance, the balance of convenience. In this case, even that issue is laced with some doubtful propositions from both sides. But taking all the allegations into account, I was of the view that the most prudent course was to refuse the application. The consequences of granting it would, it appears, be just as dire for either side. I made the judgment thus on the whole of the case, albeit on imperfect evidence in the face of strenuous and serious allegations of wrongdoing on both sides. I also evaluated the circumstances from another angle, namely, to ascertain, as best as I could, the severity or impact on the parties should I be wrong in refusing the plaintiff's application. The fact that the plaintiff had been the one who was running the business and operations of the Company all the while is neutralised in some way by the allegations of wrongdoing on his part that might damage the Company. Furthermore, no one in the company was in any position to keep watch over the plaintiff by virtue of his absolute authority there. So we have a situation where there is bound to be damage, one way or the other, whether the plaintiff is reinstated or not. In either case, damages would not only be adequate, but would also be the only remedy for the affairs conducted by both sides up to the trial. The trial judge might order some specific injunctive reliefs, but then, he would be able to do so with the benefit of considering all the evidence as tested at the trial. In complicated commercial disputes such as the present one, I would hesitate to grant mandatory injunctions to reverse an otherwise properly constituted act of a company or its board of directors. Whether the conduct would eventually be exonerated is a matter for the trial judge. In this regard, it is true that the plaintiff would suffer greatly, but if the defendants were right, they too would suffer as much, and there are more entities that will suffer on their side. This is one small but significant factor that also nudged me to dismiss the application.