

The "Sin Chuen No 112" (Union Bank of Taiwan and others, interveners)
[2007] SGHC 72

Case Number : Adm in Rem 175/2005, SUM 979/2007
Decision Date : 09 April 2007
Tribunal/Court : High Court
Coram : Low Wan Jun Tammy AR
Counsel Name(s) : Jasmine Chin (Rajah & Tann) for the plaintiff; Benjamin Seow Kim Hong (Ang & Partners) for the first intervener
Parties : —

9 April 2007

Judgment reserved.

1 The plaintiff is the fishing master of a vessel. This vessel was arrested by the Union Bank of Taiwan (the Bank), which held a mortgage on the vessel, after the vessel's owners defaulted on their payments to the Bank. The vessel was then sold by the Sheriff, the Bank staking a claim on part of the proceeds of the sale.

2 This turn of events caused the Master some consternation. Soon after, he filed this suit against the owners of the vessel for wages and bonuses left unpaid to him since 1999. To date, the owners have not taken part in the proceedings. Instead, the Bank has intervened in this action because of its interests in the proceeds of sale. It has resisted the Master's claim on the basis that the Master's employment contracts with the owners, which underpin the Master's claim, are not authentic.

3 The issues which I had to decide in this case were:

- (i) whether the Bank was entitled to summary judgment against the Master based on the Master's admission that the contracts filed in support of his statement of claim were not the original contracts signed with the owners; and
- (ii) whether the Master's Statement of Claim should be struck out as being frivolous, vexatious and/or an abuse of the process of court.

Whether the Bank was entitled to summary judgment against the Master

4 The Bank sought summary judgment against the Master based on the Master's admission in one of his affidavits that the employment contracts on which his claim had been founded were not the employment contracts which he had originally signed with the owners. The Master had candidly admitted that the employment contracts in support of his Statement of Claim were created at his behest only after the arrest of the vessel.

5 The position taken by Ms Chin, counsel for the Master, was that the Bank's application was procedurally defective. If judgment was to be sought in this action, it should be sought by the Master. The Bank, as an intervener in the action, could not ask for judgment when it had not even brought a counterclaim against the Master. In response, Mr Seow argued that it was misconceived to say that the Bank was not entitled to judgment against the Master, since, if the matter went to trial, the court could grant judgment to dismiss the Master's claim.

6 I did not agree with the rationale put forward by Mr Seow. The right to intervene is governed by O 70 r 16 of the Rules of Court. It is trite law that an intervener does not prosecute his claim in the action in which he intervenes, but protects his interest in the property by defending the action *in rem*. To this end, the intervener is permitted to set up such defences which the owners of the ship could have set up had they defended the action: *The Soeraya Emas* [1992] 1 SLR 33.

7 In other words, the position of an intervener in an action is akin to that of a defendant. The mechanism of summary judgment exists to allow a Master to obtain judgment without the hassle of a full-blown trial if he is able to show that the defendant has no defence to his claim. Logic dictates that a defendant or intervener who is *defending* a claim brought by the plaintiff is not in the position to ask for judgment to be entered *on the claim*, unless, of course, he is seeking judgment on a counterclaim. In this case, the Bank had not brought a counterclaim but had merely mounted a defence disputing, in the main, the authenticity of the Master's contracts.

8 Order 18 rule 19 of the Rules of Court provides a separate mechanism of striking out in situations where the defendant or intervener is of the view that the plaintiff's claim is unsustainable. If the court orders the pleading to be struck out, it may also order the action to be dismissed. In my view, the correct course for the Bank to have taken was to apply for the Master's Statement of Claim to be struck out under O 18 r 19 of the Rules of Court. Indeed, this was the application taken out by the Bank in the alternative prayer of its summons, to which I now turn.

Whether the Master's Statement of Claim should be struck out as being frivolous, vexatious and/or an abuse of the process of court

A chronology of events

9 As a prelude to dealing with the Bank's application for striking out, it is necessary to delve into the chronology of events of this case in somewhat more detail. In his initial Statement of Claim filed on 31 October 2005, the Master relied on three contracts of employment to establish his claim for a total of ¥849,162,213 in outstanding wages and bonuses. These three contracts of employment, which I will refer to collectively as "version one", were exhibited in the Master's affidavit dated 4 October 2005, and formed the basis of his claim against the owners.

10 The Bank applied to inspect the originals of the employment contracts exhibited in the master's affidavit. A set of contracts ("version two") was produced for its inspection. After inspecting version two of the employment contracts, the Bank contended in its defence that the Master's claim was not well-founded, as there were unexplained differences between version one and version two of the contracts.

11 Undeterred, the Master brought a motion for judgment in default of appearance by the owners in December 2005. The Bank opposed the motion, raising questions about the authenticity of the contracts of employment. The Master's motion was dismissed. Following this, the Master provided the Bank with a third set of purportedly original employment contracts ("version three").

12 The Bank appointed a document expert to examine versions two and three of the employment contracts. Based on the expert's advice, the Bank filed an amended Defence in December 2005. This amended Defence essentially stated that the allegedly original employment contracts were not authentic and/or were recently created.

13 At a hearing before me on 13 July 2006, the Master made an oral application for leave to amend the quantum claimed in his Statement of Claim to a sum of ¥28,665,520.02. As the application

was not opposed, I granted leave. An amended Statement of Claim was filed on 27 July 2006, but was soon followed by yet another application (this time, a formal application filed on 30 August 2006) to amend the Statement of Claim. The latter application was brought on the basis that the figure set out in the 27 July 2006 Statement of Claim was erroneous. The Master did not file an affidavit in support of this application. Instead, his counsel filed an affidavit to explain that he had now had sight of yet another set of employment contracts provided by his client ("version four"), and had realised that the quantum claimed in the 27 July 2006 Statement of Claim was wrong, and had to be amended to a sum of ¥185,035,787.59. Rather curiously, version four of the employment contracts consisted of only two contracts of employment, this time dated 16 August 1999 and March 2000. Both contracts were unsigned.

14 I dismissed the master's application on the grounds that it lacked good faith. The Master had not even filed an affidavit to explain why the original three contracts upon which his entire claim was based were wrong. The Master appealed against this decision, filing an affidavit ("the Master's second affidavit") to explain the need to amend the 27 July 2006 Statement of Claim. In this affidavit, he explained that prior to the arrest of the vessel, he had not pursued the issue of his unpaid wages and bonuses with the owners for various reasons. Upon learning that the vessel had been arrested, he called the owners and demanded that they pay him his outstanding salary, as well as compensation for his forbearance in pursuing the outstanding sums over the years. The owners agreed to pay the Master his unpaid salary, as well as to increase the salary paid to him. The owners then provided the Master with version one of the contracts of employment which increased the salary due to the Master.

15 Once he was informed by his solicitors that the Bank was disputing the authenticity of the employment contracts, the Master informed his solicitors that there was a mistake in the quantum which he had claimed, and that he would provide them with the necessary employment contracts to support his amended claim. The Master explained in his affidavit that he had decided to rely on version four of the employment contracts (that is, his original employment contracts with the owners) so as to avoid litigation over the authenticity of version one of the contracts (that is, the new contracts made in late 2005/early 2006 which set out the rise in his salary).

16 The master's appeal was dismissed by Choo Han Teck J, and the Bank brought this action for judgment and/or striking out.

The issue – striking out

17 I have already explained why the Bank could not be granted judgment against the Master. The case put forward by the Bank for striking out of the master's claim was as follows. The Bank relied on limbs (b) and (d) of O 18 r 19(1). They allow the court to strike out pleadings which are, under limb (b), "scandalous, frivolous or vexatious", and under limb (d), "otherwise an abuse of the process of the Court". The phrase "frivolous or vexatious" under limb (b) includes cases which are obviously unsustainable or wrong, or lacking in truth or good faith. The phrase "otherwise an abuse of the process of the Court" under limb (d) overlaps with limb (b) to some extent, since it has been defined to mean that the process of the court must be used properly and in good faith, not as a means of vexation or oppression in the process of litigation.

18 During the hearing, Ms Chin did not address the issue of whether the master's Statement of Claim was vexatious, frivolous or an abuse of process *per se*. Instead, she asked me to consider the development of events after the master's failed attempt to amend the Statement of Claim. It transpired that counsel for the Bank had written to master's counsel, informing them that the Bank intended to take out an application for the master's action to be dismissed. The Master's counsel

were asked whether the Master was willing to consent to this application. If so, the Master was to sign the draft of an enclosed settlement agreement and return it to the Bank's counsel. In essence, the settlement agreement stipulated that the Master should discontinue his action against the owners, with costs paid to the Bank, in full and final settlement of all claims, disputes, loss, damage, costs and disbursements which the Master had or might have in relation to the Master's service as Master of the vessel and/or any catch on board the vessel. In reply, Master's counsel informed counsel for the Bank that the Master was prepared to file a notice of discontinuance by consent, with costs to be agreed or taxed. The Bank would not agree to this, insisting on the Master's confirmation that he would not commence or re-commence any action(s) in any jurisdiction based on the same cause of action.

19 Based on these facts, Ms Chin contended that the Bank's application was "not fair" to the Master. The Master had attempted to do what was fair and expedient by filing a Notice of Discontinuance and was not "obliged" to agree to a settlement agreement. Ms Chin also pointed out that the court had not even decided the issue of liability. As such, there was no basis for the owner's application. Mr Seow countered that the Master should not be allowed to discontinue his action by consent and restart it on the basis of the version four contracts. This would circumvent the court's decision to refuse amendment of the Statement of Claim. If he so wished, the Master was at liberty to take out an application for leave to discontinue his action under O 21 r 3 of the Rules of Court.

20 I could not agree with the position taken by the Master. As a preliminary point, Ms Chin did not cite me any case law in support of her contention that a plaintiff's claim could not be struck out before the issue of liability had been resolved. It is clear from the wording of O 18 r 19 alone that the power to strike out may be exercised at any stage of proceedings, and certainly before the issue of liability has been decided.

21 Turning to the nub of the matter – whether the Master's claim was sustainable and brought in good faith – I was of the view that there was ample evidence to show that the Master's claim was a sham claim. In the Master's Statement of Claim, it was clearly documented that he claimed "unpaid wages, and bonus for work and services rendered to the vessel earned on board since August 1999". The Master went on to say in his affidavit filed in support of the Statement of Claim that, "I have three contracts of employment with the owners dated 10 August 1999, 1 December 2001 and 1 December 2003. *This (sic) forms the basis of my claim...*" (my emphasis). These were, of course, the version one contracts. The Master later admitted that he had colluded with the owners to create the version one contracts so as to increase his claim amount only *after* the vessel had been arrested.

22 Again relying on the fraudulent contracts, the Master attempted to obtain summary judgment on his claim. When the Bank raised the issue of the authenticity of the contracts as early as December 2005, the Master did not admit to this. The Master only produced version four of the contracts in August 2006, almost one year after the writ of summons had been filed, and eight months after the Bank queried the authenticity of the contracts. Even then, the affidavit filed by Master's counsel in support of the application to amend the Statement of Claim did not explain why an entirely new set of contracts had been surfaced so late in the day.

23 In the High Court decision of *Chee Siok Chin and ors v Minister for Home Affairs and anor* [2005] SGHC 216, V K Rajah J expounded on the definition of the phrase "abuse of process". He said:

33 Proceedings are frivolous when they are deemed to waste the court's time, and are determined to be incapable of legally sustainable and reasoned argument. Proceedings are vexatious when they are shown to be *without foundation* and/or where they *cannot possibly succeed* and/or where an action is brought only for annoyance or to gain some fanciful

advantage.

34 The instances of abuse of process can therefore be systematically classified into four categories, *viz*:

- (a) proceedings which involve a deception on the court, or are fictitious or constitute a mere sham;
- (b) proceedings where the process of the court is not being fairly or honestly used but is employed for some ulterior or improper purpose or in an improper way;
- (c) proceedings which are *manifestly groundless or without foundation* or which serve no useful purpose;
- (d) multiple or successive proceedings which cause or are likely to cause improper vexation or oppression.

24 The facts of this case fell squarely within the definition propounded by Rajah J. To countenance the Master's attempt to proceed with his claim based on the fraudulent contracts would be to allow the process of the court to be used for an improper purpose and in an improper way. The Master's claim was manifestly groundless and could not, by any stretch of the imagination, succeed if it went to trial. The Master himself must have been aware of this, hence his attempts, first, to amend his Statement of Claim so as to base it on the original employment contracts, and when this failed, to obtain the Bank's consent to discontinue the action. For these reasons, I took the view that the Master could not be allowed to proceed with his claim, and struck it out.

25 In response to Ms Chin's point that it was unfair for the Bank to force its terms of settlement upon the Master, I would make the following observations. There were essentially two courses of action open to the parties if the Master refused to sign the settlement agreement. First, the Bank could have proceeded with its application for striking out. It would have succeeded, and could have asked the court to make the necessary ancillary orders as to costs and an undertaking for the Master not to commence fresh proceedings in respect of the same action. In the alternative, the Master could have applied for leave to discontinue his action under O 21 r 3 of the Rules of Court. The court would have had the discretion to grant the application on terms, and it would again have been open to the Bank to request a term incorporating the master's undertaking not to commence fresh proceedings in respect of the same cause of action. In all likelihood, the court would have acceded to this request. In other words, although I agreed that the Bank certainly could not arm-twist the Master into reaching a settlement on terms dictated by the Bank, a pragmatic consideration of the matter would have shown that the outcome of proceedings for parties would have been substantially the same even if the Master had not acceded to the settlement agreement.

Conclusion

26 I did not enter judgment against the Master as I was of the view that it was procedurally incorrect for the Bank, in its capacity as an intervener defending the Master's claim, to seek judgment against the Master on his own claim. The correct application for the Bank to take was to strike out the Master's claim. This application was made by the Bank in its alternative prayer. In my opinion, there was no question that the Master's Statement of Claim, based as it was on three admittedly fraudulent contracts, was wholly unsustainable and lacking in good faith. To allow the Master to proceed with this claim would be an abuse of the process of court. I therefore allowed the Bank's application and struck out the Master's Statement of Claim.

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