

Silverlink Holdings Ltd v Rockline Ltd and others
[2011] SGHC 10

Case Number : Originating Summons No 986 of 2010
Decision Date : 13 January 2011
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Eddee Ng and Emmeline Lim (Tan Kok Quan Partnership) for the plaintiff; Indranee Rajah SC, Rakesh Kirpalani and Tan Shou Min (Drew & Napier LLC) for the defendants; Selvaratnam Sharmini Sharon (Harry Elias Partnership LLP) for third party in Suit 834 of 2005 (watching brief); Carol Teh (ShookLin & Bok LLP) for Schroder PLC (watching brief).
Parties : Silverlink Holdings Ltd — Rockline Ltd and others

Contract

13 January 2011

Judgment reserved.

Choo Han Teck J:

1 This Originating Summons (“OS”) is a sequel to Suit 834 of 2005 (“the First Action”): see *Rockline Limited v Silverlink Holdings Limited* [2010] SGHC 127 and *Rockline Limited v Silverlink Holdings Limited* [2010] SGHC 251. The outcome of the application of this OS will have a direct bearing on Silverlink’s right to appeal against my earlier decisions. At the outset, counsel for Rockline and Superon (hereinafter “SAP”) wrote to the Registry requesting that the application be placed before me as that would save time and costs for all parties. Counsel for Silverlink did not object to the same, although they did note that there was “no real reason” for the application to be placed before me.

2 Central to the current dispute is a settlement agreement between the parties (“the Settlement Agreement”), which this Court was previously not privy to. The Settlement Agreement provided, *inter alia*, that the parties will not exercise their rights of appeal in the First Action unless the damages awarded were below US\$17.5m or above US\$33.5m. The damages awarded in the First action fell within the aforesaid range, and so the parties were, *prima facie*, bound by the Settlement Agreement not to appeal. In addition, cl 7 of the Settlement Agreement provided that:

The [parties] unconditionally withdraw all allegations against each other in Suit 375 (which will include allegations against Anil Thadani for inducement of breach of contract) and insofar as these allegations are repeated in Suit 834, they are also deemed withdrawn. Save as aforesaid, nothing herein is intended to affect the matters in [the First Action].

3 Suit 375 of 2007 (“the Second Action”) was a claim against several individuals for inducement and/or conspiracy. In the present application, Silverlink takes the position that SAP was in repudiatory breach of the Settlement Agreement by including in the First Action allegations from the Second Action (which they had agreed unconditionally to withdraw) in their prayers for relief in the First Action (see the Submissions on Remedies and Reliefs). In particular, Silverlink alleged that the following claims were resuscitated from the Second Action (“the Claims”):

- (i) the claim for Enhanced Benefits;
- (ii) the claim for alleged loss and damage arising from the loss of chance to exit their investment in Silverlink;
- (iii) the claim for loss and damage arising from the alleged wrongful novation of the Debenture and Share Pledge Agreement; and
- (iv) the claim for the loss of the right to veto Silverlink's right issue.

4 On the other hand, SAP contended that they did not breach the Settlement Agreement as the Claims were made against Silverlink, and were claims for relief flowing from the latter's breaches of contract. They emphasised that the allegations and claims for conspiracy in the Second Action against the relevant individuals had been withdrawn and were not asserted in the First Action.

5 Clause 7 of the Settlement Agreement was critical to the present dispute. In this regard, the contractual intent of the Settlement Agreement is evident from Mr Thadani's email dated 10 January 2010, as follows:

The procurement claim is part of the second suit. When the second suit is unconditionally withdrawn, this claim automatically falls away from the first suit also. I should also point out that the whole basis of our agreement has been that we would do away with the personal allegations, leaving only the commercial matter to be resolved.

6 I agree with counsel for SAP that the intention behind the Settlement Agreement was to remove allegations of a personal nature against the individuals concerned. That said, the parties' claims in respect of the contractual dispute were to be fully preserved. The Settlement Agreement was not intended to, and should not be construed to limit the scope of damages claimable from the latter claim. It is important to emphasise that the Settlement Agreement expressly provided that save for the removal of all allegations in the Second Action (which must be construed to mean *personal* allegations), nothing was intended to affect the First Action. In other words, SAP was free to pursue any and all allegations and/or claims of a commercial nature, which was why the trial and proceedings in the First Action continued to the end.

7 The First Action was a claim for breach of contract whereas the Second Action was a claim premised in part on inducement and/or conspiracy. The two actions were intertwined to the extent that the alleged conspiracy was to induce the said breach of contract. In light of this, it was clear that the potential damages, if any, that could flow from the two actions might plausibly overlap. Save that they were not expressly pleaded, it was no surprise that the Claims could be made for in both the Second Action, as well as in the First Action.

8 In my opinion, the Claims did not amount to a breach of cl 7 of the Settlement Agreement, which was intended to only cover allegations of a *personal* nature. As rightly pointed out by counsel, the Claims were made in the context of damages flowing from the breach of contract, and unlike the Statement of Claim for the Second Action, no allegations of a *personal* nature had been made against the relevant individuals. In addition, I agree with counsel that references were made to certain individuals in the Submissions and Reply Submissions on Remedies and Reliefs for the sole reason that

those individuals were acting on the Silverlink and Argent side at the material time. Given that the parties in the First Action are corporate entities, it was inevitable that references were made to the individuals. In the circumstances, I find that the SAP did not breach cl 7 of the Settlement Agreement.

9 A further point of some relevance that was not canvassed related to cl 12 of the Settlement Agreement, which reads as follows:

The [parties] undertake not to make any further claims or commence any further action or proceedings in any jurisdiction and in any form in respect of the subject matter of Suit 375 against any person...

10 The subject matter of the Second Action pertained to the allegations of procurement and/or conspiracy to induce the breach of contract on the part of the various individuals. For the same reasons given in respect of cl 7, I am of the opinion that SAP was likewise not in breach of cl 12. The subject matter of the First Action and the Second Action were distinct (reinforced by the fact that the court had previously declined to fully consolidate both actions). In any case, SAP had prayed for damages to be assessed in the First Action, and the Claims were made pursuant to that prayer. The Claims therefore cannot be said to be "further claims" within the meaning of cl 12. For the above reasons, I find that SAP likewise did not breach cl 12 of the Settlement Agreement.

11 SAP's alternative argument was that Silverlink had not treated the Settlement Agreement as discharged, and as such could not claim the declaratory reliefs sought in the present application. Citing *Fercometal S.A.R.L. v Mediterranean Shipping Co SA* [1988] 1 AC 788, counsel for SAP submitted that in the face of a repudiatory breach, the innocent party must elect to either affirm the contract, or accept the repudiation. It cannot be the case that the wrongful party remained bound by the terms of the repudiated contract, while the innocent party is freed from his contractual obligations. In any event, counsel argued that Silverlink had in fact affirmed any repudiation, if any, by insisting that SAP remained bound by the terms of the Settlement Agreement.

12 I agree with counsel on her first point. It cannot be the case that the wrongful party continues to be bound by the terms of a repudiated contract, while the innocent party is not. For example, if the seller of a property commits a repudiatory breach, it would not be right that the buyer is freed from his obligation to make payment, while the seller remains bound to deliver up the property. In my view, the innocent party must elect to either accept the repudiation, or to affirm the contract, although either option would still entitle the latter to make a claim for damages. As for counsel's second point, I disagree that Silverlink has accepted the repudiation, assuming if any. I am of the view that Silverlink's present application arose from the latter's belief that they are no longer bound by the terms of the Settlement Agreement, and that is contrary to any assertion of affirmation.

13 For the foregoing reasons, I decline to grant the reliefs sought by Silverlink. Costs are to follow the event and to be taxed if not agreed.

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