

Ho Pak Kim Realty Co Pte Ltd v Attorney-General
[2014] SGHC 176

Case Number : Suit No 4 of 2014 (Registrar's Appeal No 109 of 2014)
Decision Date : 05 September 2014
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : The plaintiff in person; Zheng Shaokai and Koo Zhi Xuan (Attorney-General's Chambers) for the defendant.
Parties : Ho Pak Kim Realty Co Pte Ltd — Attorney-General

Civil Procedure – striking out – judicial immunity

5 September 2014

Woo Bih Li J:

Introduction

1 This action was the second of two actions brought by Ho Soo Fong (“HSF”) – either in his own name or in the name of Ho Pak Kim Realty Co Pte Ltd (“HPK”) – against the defendant, the Government of the Republic of Singapore (“the Government”), to recover damages for certain judicial acts and orders made. In Suit No [X] (“the First Action”), HSF’s action was to recover damages for judicial acts or orders made in relation to ancillary matters concerning the dissolution of the marriage between HSF and his former spouse. In the present action, HSF commenced proceedings on behalf of HPK, of which HSF was the Managing Director.

2 The appeal in the present action was made by HPK against the decision of a Senior Assistant Registrar (“the SAR”), who allowed an application by way of Summons No 445 of 2014 for the Statement of Claim (“the SOC”) and the action against the Government to be struck out and dismissed respectively. After hearing arguments, I dismissed the appeal. I was in agreement with the SAR that the claim against the Government did not contain a reasonable cause of action. HPK has since filed an appeal against my decision. I now state the reasons for my decision.

HPK’s claim

3 In the present action brought by HPK, damages in the sum of \$4,797,631.27, interest, and costs [\[note: 1\]](#) were claimed for a number of orders made by judges and judicial officers. These orders were made pursuant to court proceedings commenced as a result of construction disputes between HPK and Revitech Pte Ltd (“Revitech”). HPK was the main contractor employed by Revitech to construct a block of apartments with basement car park and a swimming pool at No 89 Kovan Road, Singapore. [\[note: 2\]](#) It was HPK’s case that the decisions on the disputes in Suit No 36 of 2006 and Civil Appeal No 74 of 2010 were “bias[ed]” and “unfair”. [\[note: 3\]](#)

4 For background information, the following judicial acts and orders formed the subject of the present action:

(a) *Ho Pak Kim Realty Co Pte Ltd v Revitech Pte Ltd* [2007] SGHC 194: This was the first tranche of Suit No 36 of 2006. The High Court was asked to determine whether certain documents formed part of the building contract between the parties. The court's finding would impact the determination of the scope of the works contracted for. Justice Lai Siu Chiu ruled in favour of Revitech on 13 November 2007. HPK filed an appeal (Civil Appeal No 149 of 2007) but did not file the Record of Appeal in time. [\[note: 4\]](#) The appeal was hence deemed to have been withdrawn.

(b) *Ho Pak Kim Realty Co Pte Ltd v Revitech Pte Ltd* [2010] SGHC 106: This was the second tranche of Suit No 36 of 2006. HPK proceeded on its substantive claims for (i) outstanding progress payments certified by the architect; (ii) under-valuation of works carried out; and (iii) damages for wrongful termination of the contract. Revitech counterclaimed for liquidated damages for delay in the construction works and cost of rectification of defective works. Lai J delivered judgment on 8 April 2010, granting final judgment to HPK in the sums of \$771,630.97 and \$10,023.49. Its claim for undervalued works and wrongful termination of the contract were dismissed. Lai J granted final judgment to Revitech in the sum of \$414,000 for liquidated damages for HPK's delay. Lai J also granted several other reliefs.

(c) Civil Appeal No 74 of 2010: The Court of Appeal dismissed HPK's appeal against Lai J's decision in *Ho Pak Kim Realty Co Pte Ltd v Revitech Pte Ltd* [2010] SGHC 106. A minor variation (underlined below) was made to Lai J's order for interlocutory judgment at [135(f)(ii)]: [\[note: 5\]](#)

The defendant was awarded interlocutory judgment against the plaintiff for defective construction ~~of but not~~ limited to (1) the roof and parapet wall; (2) the basement car park; (3) windows, sliding doors, glass balustrades and aluminium trellis; (4) defective marble flooring; (5) external walls; (6) staircases; (7) outdoor shower and (8) exit signages and in respect of all these items, only if the defendant established that it was subject to any legal obligation to complete the said rectifications.

(d) *Ho Pak Kim Realty Co Pte Ltd v Revitech Pte Ltd* [2013] SGHC 41: This was a cross-appeal by both HPK and Revitech against an Assistant Registrar's assessment of damages for part of the interlocutory judgment ordered against HPK. Lai J delivered the judgment on 19 February 2013. Revitech's appeal was allowed while HPK's appeal was dismissed.

(e) Suit No 36 of 2006 (Assessment of Damages No 60 of 2013): This was the second tranche of an assessment of damages hearing in which Assistant Registrar James Elisha Lee ("AR Lee") was asked to determine Revitech's cost of rectifying HPK's defective construction. HPK did not participate in the proceedings. [\[note: 6\]](#) On 29 October 2013, AR Lee awarded damages of \$1,473,828.48 to Revitech.

5 HPK's dissatisfaction with the above orders culminated in the present action. HPK sued the Government for the above judicial orders made. It was alleged that Lai J "intentionally acted unfairly" and "bull[ied]" HPK. [\[note: 7\]](#) He also claimed that the three judges of the Court of Appeal in Civil Appeal No 74 of 2010 had erred when they "supported [Lai J]'s decision". [\[note: 8\]](#) As for AR Lee's order in Assessment of Damages No 60 of 2013, HPK claimed that it was "totally not correct". [\[note: 9\]](#)

The Government's arguments

HPK was not represented by a solicitor

6 The Government advanced two arguments. First, the writ of summons should be set aside under O 12 r 7(1) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the ROC") and that this suit be dismissed on the ground that the writ was in breach of O 5 r 6(2) of the ROC. [\[note: 10\]](#) The argument was that O 5 r 6(2) requires HPK to be represented by a solicitor when beginning or carrying on proceedings in the Supreme Court. HSF is not a solicitor. O 5 r 6(2) reads as follows:

(2) Subject to Order 1, Rule 9(2) and any other written law, and except in accordance with any practice directions for the time being issued by the Registrar, a body corporate may not begin or carry on any proceedings in Court otherwise than by a solicitor.

7 As can be seen, O 5 r 6(2) expressly states that the provision is qualified by O 1 r 9(2), which reads as follows:

(2) For the purposes of section 34(1)(ea) of the Legal Profession Act (Cap. 161) and paragraph (1), the Court may, on an application by a company or a limited liability partnership, give leave for an officer of the company or limited liability partnership to act on behalf of the company or limited liability partnership in any relevant matter or proceeding to which the company or limited liability partnership is a party, if the Court is satisfied that —

(a) the officer has been duly authorised by the company or limited liability partnership to act on behalf of the company or limited liability partnership in that matter or proceeding; and

(b) it is appropriate to give such leave in the circumstances of the case.

8 Although O 1 r 9(2) of the ROC allows the court to grant leave for an officer of the company to represent it in the proceedings, the Government argued that the provision applied only to proceedings commenced in the Subordinate Courts. [\[note: 11\]](#) This was because, until 1 May 2014, the phrase "relevant matter or proceeding" found in O 1 r 9(2) was defined in O 1 r 9(5) to mean "any matter or proceeding in a District Court or a Magistrate's Court" and the word "Court" found in O 1 r 9(2) was defined in O 1 r 9(6) to mean "a District Court or a Magistrate's Court".

9 Recently, amendments were made to O 1 rr 9(5) and (6) of the ROC such that O 1 r 9(2) was extended to cover proceedings commenced in the Supreme Court. These amendments came into operation on 1 May 2014. Although the present action was commenced (on 3 January 2014) before the amendments came into effect, it would nevertheless be covered by the amendments. This is because O 1 r 9(5) expressly provides that the amendments apply to proceedings commenced before 1 May 2014.

Lack of substantive merits

10 Alternatively, the Government argued for the SOC to be struck out under O 18 r 19(1) of the ROC. It argued that the SOC:

- (a) disclosed no reasonable cause of action under O 18 r 19(1)(a) of the ROC;
- (b) was scandalous, frivolous or vexatious under O 18 r 19(1)(b) of the ROC; and/or
- (c) amounted to an abuse of process under O 18 r 19(1)(d) of the ROC.

11 To this end, the Government relied on the same legal arguments advanced in the First Action.

[\[note: 12\]](#) A summary of those arguments can be found at [7]–[8] of the grounds of decision for the First Action.

Overview

12 Even though HPK had not made an application for HSF to represent it, pursuant to O 1 r 9(2) (in the light of the recent amendment to the ROC referred to above at [9]), I did not require such an application to be made as it was quite clear to me that the present action had no substantive merit. HPK would have incurred additional costs to make such an application.

Issue

13 The remaining issue before this court was whether there was a reasonable cause of action against the Government for the judicial acts and orders set out above.

Reasons for striking out the SOC

14 For the reasons I have stated in my Grounds of Decision for the First Action, I concluded that no reasonable cause of action was disclosed in the present action.

15 Furthermore, AR Lee is also protected under s 79(1) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed), which states as follows:

Protection of Registrar and other officers

79.—(1) The Registrar, the Deputy Registrar or an Assistant Registrar or other person acting judicially shall not be liable to be sued in any court exercising civil jurisdiction for any act done by him in the discharge of his judicial duty whether or not within the limits of his jurisdiction, provided that he at the time in good faith believed himself to have jurisdiction to do or order the act complained of.

Costs

16 After hearing submissions on costs, I ordered HPK to pay \$500, inclusive of disbursements, forthwith to the Government for the appeal in the present action as there was another appeal by HSF in the First Action with similar arguments.

[\[note: 1\]](#) Statement of Claim, p 9.

[\[note: 2\]](#) *Ho Pak Kim Realty Co Pte Ltd v Revitech Pte Ltd* [2007] SGHC 194 at [1].

[\[note: 3\]](#) Statement of Claim, p 2.

[\[note: 4\]](#) *Ho Pak Kim Realty Co Pte Ltd v Revitech Pte Ltd* [2013] SGHC 41 at [2].

[\[note: 5\]](#) Koo Zhi Xuan's affidavit dated 27 Jan 2014, Exh 3.

[\[note: 6\]](#) Koo Zhi Xuan's affidavit dated 27 Jan 2014, Exh 5.

[\[note: 7\]](#) Statement of Claim, p 2.

[\[note: 8\]](#) Statement of Claim, pp 2, 4 and 8.

[\[note: 9\]](#) Statement of Claim, p 6, para 1(j).

[\[note: 10\]](#) Summons No 445 of 2014, para 1.

[\[note: 11\]](#) Defendant's submissions, para 6.

[\[note: 12\]](#) Defendant's submissions, para 15.

Copyright © Government of Singapore.