

Alternative Advisors Investments Pte Ltd and another v Asidokona Mining Resources Pte Ltd
and another
[2020] SGHC 125

Case Number : Suit No 734 of 2018 (Registrar's Appeal No 80 of 2020)
Decision Date : 18 June 2020
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Narayanan Sreenivasan SC, Muralli Rajaram and Kyle Gabriel Peters (K&L Gates Straits Law LLC) for the plaintiffs; Prakash P Mulani and Ruelia Rufus (M & A Law Corporation) for the defendants.
Parties : Alternative Advisors Investments Pte Ltd — Supreme Star Investments Ltd — Asidokona Mining Resources Pte Ltd — Soh Sai Kiang

Civil Procedure – Striking out

Civil Procedure – Disclosure of documents

18 June 2020

Judgment reserved.

Choo Han Teck J:

1 In this suit, the plaintiffs allege that the second plaintiff lent the first defendant S\$2m under a loan agreement dated 22 July 2016 (“Alleged Loan Agreement”). According to the first plaintiff, one Mr Wong Joo Wan executed the Alleged Loan Agreement on the second plaintiff’s behalf. Mr Wong describes himself as the managing director of the first plaintiff and the principal of the second plaintiff. The second defendant is the sole shareholder and director of the first defendant. He is alleged to have stood as the first defendant’s guarantor in the Alleged Loan Agreement under a personal guarantee (“Alleged Guarantee”), and executed a deed charging all his shares in the first defendant in favour of the second plaintiff (“Alleged Deed of Charge”). The second plaintiff tried to assign the Alleged Loan Agreement, Guarantee and Deed of Charge to the first plaintiff. The first plaintiff commenced this suit against the defendants to recover the outstanding principal under the Alleged Loan Agreement, plus interest, and the delivery up of the second defendant’s shares in the first defendant. As it is disputed whether the attempted assignment was effective, the first plaintiff joined the second plaintiff to this action.

2 The defendants obtained an order for specific discovery of documents relating to, *inter alia*, the source of the monies provided under the Alleged Loan Agreement, which documents the plaintiffs protested in vain as being irrelevant. The plaintiffs said that half of the loan monies came from Mr Wong, and the other half came from a “Hong Kong investor”. Following the plaintiffs’ disclosure of various documents, the defendants complained that the plaintiffs had still failed to comply with the discovery order, and applied for an “unless” order to enforce the same.

3 The application for the “unless” order was heard in four tranches between February and March this year. In the first hearing on 3 February 2020, the assistant registrar ordered the plaintiffs to “file an affidavit as to either [Mr Wong]’s attempts to obtain documents from [the second plaintiff’s solicitors at the material time, JLC Advisors LLP], or his inability to do so”. This order concerned three categories of documents, which included documents evidencing the alleged contribution of S\$1m from

the "Hong Kong investor" to the second plaintiff, and communications between the "Hong Kong investor" and Mr Wong and/or the second plaintiff regarding the alleged contribution. One Mr Jeffrey Ong, a lawyer with JLC Advisors LLP was alleged to be the lawyer who put the Alleged Loan Agreement together for the parties. He is now in remand pending investigations for fraud. The plaintiffs claimed that they had complied with the order made on 3 February 2020.

4 However, the defendants disagreed and claimed that the plaintiffs had not completely complied with the said order. The plaintiffs said that Mr Wong had already confirmed on affidavit that beyond what they had already disclosed, they did not have in their possession, custody or power any other documents relating to the alleged contribution from the "Hong Kong investor" to the second plaintiff. They claimed that the party who could provide any such missing documents was JLC Advisors LLP.

5 Thus, in a subsequent hearing, the assistant registrar ordered:

[Plaintiffs] to write to JLC Advisors to ask JLC Advisors to produce all bank statements of JLC Advisors for the months of June and July 2016 evidencing payment/s by the HK investor towards the alleged loan of S\$1m that the HK investor gave to Supreme Star Investments Ltd. [Plaintiffs] are to write by the close of business on 2 March 2020. [Plaintiffs] to file an affidavit exhibiting this letter and the response from JLC Advisors, by 13 March 2020.

6 The plaintiffs say that this was done. At the third hearing before the assistant registrar, it not only transpired that the "Hong Kong investor" was one Ms Lou Swee Lan, but that Ms Lou was also the sole shareholder and director of the second plaintiff. The assistant registrar took the view that she would not have made an order involving JLC Advisors LLP had she been aware of this. Hence, on 17 March 2020, the assistant registrar directed the plaintiffs to comply with either of two options by 24 March 2020:

Option 1: Mr Nicholas Narayanan [*ie*, the plaintiffs' solicitor at the time] is to confirm to this court, as counsel for both plaintiffs, that Wong Joo Wan's 8th, 9th, 10th, 11th affidavits and affidavit verifying supplementary list of documents dated 14 November 2019, bind the HK investor, Mdm Lou Swee Lan. This confirmation does not mean that his other affidavits do not bind both Plaintiffs. This confirmation does mean that Lou Swee Lan and the second plaintiff did not have possession, custody or power of those documents as at the dates of the respective said affidavits.

Option 2: Mdm Lou Swee Lan to file an affidavit on behalf of the second plaintiff, stating whether she and/or the second plaintiff have or had at any time had possession, custody or power...of [Categories] A(vi), B(i) and C(v)

The affidavits of Mr Wong referred to in the above order stated, *inter alia*, that the plaintiffs do not have in their possession, custody or power certain documents relating to the alleged contribution of S\$1m from the "Hong Kong investor" to the second plaintiff.

7 Subsequently, the plaintiffs' solicitor at the time, Mr Nicholas Narayanan, applied to be discharged and his application was granted on 4 June 2020. The assistant registrar's order on 17 March 2020 was not complied with. At the fourth hearing on 31 March 2020, the assistant registrar directed that unless the order of 17 March 2020 is complied with by 7 April 2020, the plaintiffs' claim would be struck out (the "Unless Order"). Prior to that deadline, the first plaintiff changed solicitors to Mr N Sreenivasan SC, and filed the present appeal against the assistant registrar's decision to issue the Unless Order against it. The first plaintiff also applied for a stay of the Unless Order, but the application could not be heard in time. The second plaintiff did not file any appeal of its own. Since

the Unless Order was not complied with by the stipulated deadline, the plaintiffs' claim was struck off accordingly.

8 Turning to the present appeal, the direction that either the solicitor must confirm that his witness' affidavit binds one or more parties, or another witness must file an affidavit confirming that she and a party to the proceedings are bound by the affidavits of a different witness, is unusual. First of all, every affidavit ought to state on whose behalf the affidavit was sworn or affirmed. It usually begins by stating "I make this affidavit on behalf of ..." Where such a statement is omitted so that it is necessary to establish on whose behalf a witness' affidavit was made, that witness should be the person directed to swear a supplementary affidavit or refile the original affidavit with the necessary amendment. Every person will be bound by the affidavits he makes. If the affidavit was made on behalf of another person without authority, that other person must swear an affidavit disclaiming it. To that end, all that is required is to ensure that all such other persons had been served with the affidavit in question. Solicitors are best advised to refrain from swearing affidavits of facts on behalf of their clients.

9 In this case, Ms Lou is not a party to these proceedings in her personal capacity. As the sole shareholder and director of the second plaintiff, she may be a witness, but it is ultimately the second plaintiff which is a party to this action. Insofar as the first and second plaintiffs' discovery obligations are concerned, Mr Wong has already filed several affidavits which expressly state that they were made on behalf of both plaintiffs and confirm that both plaintiffs do not have in their possession, custody or power the documents which the defendants seek. The second plaintiff is, of course, entitled to file an affidavit denying that Mr Wong could speak on its behalf, but it had not done so and should simply have been taken to be bound by his affidavits. Without evidence that Mr Wong had no authority to file his affidavits on behalf of the second plaintiff, I do not think it was necessary for the assistant registrar to order that Ms Lou confirm that she and/or the second plaintiff are bound by his affidavits, or that they do not have the relevant documents in their possession, custody or power.

10 It is not clear why Mr Narayanan did not make this point, and instead, applied to have himself discharged. Given these circumstances, I am of the view that the Unless Order against the first plaintiff ought to be set aside.

11 For the reasons above, the appeal is allowed. Costs to be reserved to trial judge.