

Reputation Administration Service Pte Ltd v Spamhaus Technology Ltd
[2020] SGHC 240

Case Number : Suit No 814 of 2019 (Summons No 3727 of 2020)
Decision Date : 03 November 2020
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Kyle Yew Chang Mao and Vanathi Eliora Ray (Joseph Lopez LLP) for the applicant; Han Wah Teng (CTLG Law Corporation) for respondent.
Parties : Reputation Administration Service Pte Ltd — Spamhaus Technology Ltd

Civil Procedure – Appeals – Leave

3 November 2020

Choo Han Teck J:

1 This is an application for leave to appeal against the decision in Registrar’s Appeal No 145 of 2020 (“RA 145”), which arises from Suit 814 of 2019 (“the Suit”).

2 The Suit is a claim commenced by the respondent, Spamhaus Technology Ltd (“ST”), against the applicant, Reputation Administration Service Pte Ltd (“RAS”). In the Suit, ST alleges that RAS is in arrears of commissions which are payable to ST under a contract (“the Contract”).

3 On 3 June 2020, RAS took out Summons 2181 of 2020 (“SUM 2181”) to stay the Suit under O 12 r 7 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (“ROC”), on the basis that the Contract contained the following exclusive jurisdiction clause (“the EJC”):

This Agreement shall be exclusively governed by the laws of England and Wales, and the parties submit to the exclusive jurisdiction of the Courts of England and Wales in relation to the Agreement and any dispute or claim that arises out of or in connection with this Agreement.

4 The Assistant Registrar (“AR”) applied the principles in *Vinmar Overseas (Singapore) Pte Ltd v PTT International Trading Pte Ltd* [2018] 2 SLR 1271 (“*Vinmar*”), which he summarised as follows:

(a) The applicant bears the burden of demonstrating that there is a “good arguable case” that an EJC governs the dispute. To establish a “good arguable case”, the applicant needs to have “the better of the argument, on the evidence before the court, that the [jurisdiction] agreement exists and applies to the dispute” (*Vinmar* at [41] and [45]).

(b) If the EJC applies, the next question is whether there is strong cause to refuse a stay of proceedings (*Vinmar* at [69]).

5 The AR dismissed SUM 2181 as he was unable to conclude that there was a good arguable case that the EJC governed the Suit. This was because RAS had “hedg[ed] its position” as to whether the EJC applied. In particular, RAS’ sole director, Mr Goel Adesh Kumar, had stated on affidavit that the EJC would be an applicable term of the Contract “if indeed such an agreement [was] found to be established at law”. Mr Goel had also questioned whether ST was a party to the Contract (and,

consequently, whether it had locus standi to bring the claim).

6 In RA 145, RAS appealed the AR's decision. After hearing the parties, I agreed with the AR's reasoning and dismissed RAS' appeal on the basis that RAS had not discharged its burden of showing that the EJC applied. RAS then filed this application for leave to appeal against my decision.

7 The principles regarding leave to appeal are well-settled. There are at least three grounds on which RAS can obtain leave to appeal (see *Lee Kuan Yew v Tang Liang Hong and another* [1997] 2 SLR(R) 862 at [15] and [16]):

- (a) There is a *prima facie* case of error.
- (b) The appeal involves a question of general principle decided for the first time.
- (c) The appeal involves a question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage.

8 Counsel for RAS, Mr Kyle Yew, contended that my decision in RA 145 involved a *prima facie* case of error as I did not consider and apply the decision in the High Court case of *PT Selecta Bestama v Sin Huat Huat Marine Transportation Pte Ltd* [2016] 1 SLR 729 ("*PT Selecta*").

9 In *PT Selecta*, Steven Chong J (as he then was) held (at [40] and [41]) that the applicability of an EJC would differ depending on which of the following two categories the case fell within:

- (a) If the parties are in dispute as to the existence or validity of the agreement containing the EJC (eg, due to fraud or misrepresentation), the dispute would still be determined in accordance with the EJC as if the contract was valid ("Category 1").
- (b) By contrast, if there was clearly no concluded contract at all, such as where the parties were *ad idem* that there was no contract, or where the other party was defrauded into thinking the contract was of a wholly different nature giving rise to the plea of *non est factum*, the EJC would no longer be applicable ("Category 2").

10 Mr Yew argued that the present case falls within Category 1 above and that RAS ought to be able to rely on the EJC notwithstanding that it also intends to challenge the validity of the Contract in the Suit. By contrast, counsel for ST, Mr Han Wah Teng, argued that the present case falls within Category 2 above and that the EJC ought not to apply.

11 Having considered the parties' arguments in detail, I am of the view that there may be some ambiguity as to whether the present case falls into Category 1 or Category 2 of *PT Selecta*. On one hand, this is not a case where there is "clearly no concluded contract at all". It should be noted that on ST's own case, the Contract exists and is binding on the parties. On the other hand, this is not a case where RAS is disputing the existence or validity of the agreement on the basis that contract is not validly constituted, eg due to fraud or misrepresentation. Instead, RAS is disputing whether ST is a party to the Contract. This appears to be a situation that was not expressly considered in *PT Selecta*.

12 In the premises, I am of the view that an appeal of RA 145 would involve a question of importance upon which further argument and a decision of a higher tribunal (in this case, the Court of Appeal) would be to the public advantage. I therefore grant leave to appeal, with costs to be reserved.

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