Oh Bernard *v* Six Capital Investments Ltd (in liquidation) and others [2020] SGHC 42

Case Number : Suit No 754 of 2018 (Registrar's Appeal No 370 of 2019)

Decision Date : 04 March 2020

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Prem K Gurbani (instructed), Michael Moey Chin Woon and Glenda Lim (Moey & Yuen) for plaintiff; Joan Tee Li Min (Sim Chong LLC) watching brief for second defendant; Muralli Rajaram (K&L Gates Straits Law LLC) for 1st, 2nd and 3rd Non-Parties; Choo Zheng Xi and Priscilla Chia Wen Qi (Peter Low & Choo LLC) for 4th and 5th Non-Parties.

Parties : Oh Bernard — Six Capital Investments Limited — (in liquidation in the British Virgin Islands) — Teng Chee Wai — Gan Shi Ying

Civil Procedure – Parties – Joinder

Civil Procedure – Pleadings – Amendment

4 March 2020 Judgment reserved.

Choo Han Teck J:

1 From the submissions of Mr Prem K Gurbani, instructed counsel for the plaintiff, it seems that the plaintiff is the last man standing among the thousands like him who had paid lots of money – US$500,000 in the plaintiff's case – into an unknown bank account for what they believed to be an investment in foreign exchange trading based on an alleged promising software. The investors' money is all gone and they have no one's neck to throttle. All the other investors, counsel said, have given up any hope of recovering their money. What the plaintiff has done in this case, is to sue Six Capital Investments Limited ("first defendant") which is a company now in liquidation as the company that he claims was meant to be the company trading his money for him. He has also sued the second defendant who was the director of the first defendant. He initially sued Miss Gan Shi Ying, the third defendant, but has since discontinued the action against her because the liquidators of the first defendant did not mention her name in their report. This was altogether very strange since the plaintiff alleged in his statement of claim that Miss Gan was the person who had made the false representations to him leading him to part with his US$500,000.

2 Having discontinued the action against Miss Gan, the plaintiff now wishes to join five other individuals as defendants. The first of these intended parties is the wife of the second defendant. The second and third intended parties are their sons. They are all represented by Mr Muralli Rajaram. The second defendant is represented by Ms Joan Tee. The fourth and fifth intended parties were described by the plaintiff as, respectively, the Chief Financial Officer and the Chief Revenue Officer of the group of companies allegedly controlled by the second defendant (which includes the first defendant). They are both represented by Mr Choo Zheng Xi.

3 The plaintiff's application to join the five intended parties, and amend his writ and statement of claim was dismissed by the learned Assistant Registrar ("AR") below. Mr Muralli and Mr Choo submitted that there is no evidence that any of the intended parties had anything to do with this case. I use

the reference to this case here in the wider sense, which includes the thousands of investors who, it is alleged, lost their money to the first defendant in the same way the plaintiff here had lost his money. When the plaintiff went to lodge a police report, he was purportedly told that he need not have to because thousands of other complaints had already been lodged and the police were already investigating.

4 Mr Muralli and Mr Choo submitted that had the intended parties applied to strike out the plaintiff's claim, the court would have done so on the ground that the plaintiff had no arguable chance of success. Mr Gurbani conceded that the plaintiff had no written contract on which to hinge his case, nor has he any evidence save what had transpired in discussions with Miss Gan, before and after the plaintiff parted with his money. The only direct reference to the clients of Mr Muralli was a note in the liquidators' report stating that the liquidators believed that they owed certain debts to the first defendant. The liquidators' report also stated that the second defendant had mentioned during an interview that the first defendant had used some of its money to finance the operations of certain other companies. The plaintiff alleges that the first to third intended parties were directors of one or more of these other companies at some point.

5 More generally, all five of the intended parties were alleged to have been directors of one or more companies in the group of companies controlled by the second defendant. The plaintiff listed 26 companies in his proposed amendment to the statement of claim, including the first defendant as well as some of the companies allegedly financed by the first defendant (see [4] above).

6 If the evidence against the defendants and the intended parties seem sparse, it is because it is sparse. There is nothing more than what the liquidators have uncovered. Mr Gurbani hopes that through discovery and interrogatories of the new intended parties, the plaintiff would be able to elicit the evidence he needs. An application like this, as with almost everything else in life, is about a question of balance. Generally, an aggrieved litigant is entitled to seek redress, but the court cannot offer justice to one at the expense of another by laying that other out in sacrifice, for he too must be protected from being dragged into litigation by a groundless action. Should the plaintiff join the five intended parties as defendants, he must eventually satisfy the court that he has a reasonable claim against them. It is not sufficient to claim merely that the intended parties were directors of the first defendant, or were under the control of the defendants, or had received money as loans from the first defendant, or were directors of companies which had received moneys from the first defendant. In my view, the various other links which the intended parties were alleged to have with the first and second defendants were also tenuous, at present. It may well be that should an intended party apply to strike out such a claim, he would succeed. But in order to apply to strike out the claim, he must first be a defendant. Herein, lies the problem. The plaintiff ought to have sued the intended parties as defendants in the first place. This was the start of a procedural mess of the plaintiff's own making although he claims that he did not know of their involvement until he had seen the liquidators' report.

7 Having discontinued his claim against Miss Gan, the plaintiff has severed his only direct link with the fraud allegedly practised on him. If Miss Gan was not involved, who was? At this stage, even Mr Gurbani does not know for certain. We do not know who Miss Gan is nor how her evidence might stand up under cross-examination, but she must be a charming and persuasive person, having allegedly first gotten the plaintiff to part with US$500,000 into a fraudulent bank account, and now to discontinue his action against her – and all on her word alone, it seems.

8 When we take the long view, we can understand why the learned AR would not, based on the evidence so far, hold that these five intended parties had conspired to cheat the plaintiff of his money by being parties to a conspiracy to defraud, and thus refused to allow them to be joined as defendants. Furthermore, the plaintiff will himself be incurring more losses by way of legal costs for

pursuing what seems a lost cause. But we are getting ahead of ourselves here. What counsel before the AR seemed to have overlooked is that a plaintiff does not need leave to sue anyone. It is for a person who feels that he has been wrongly sued to apply to strike out the claim. The plaintiff is at liberty to first sue the intended parties today without leave of court, and then to apply for that suit to be consolidated with the present one.

9 As far as the issue of joinder in the present appeal is concerned, counsel for the intended parties submitted that the applicable law is that contained in O 15, r 6(2)(b) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC"). They, however, completely omitted to address the applicability of O 15, r 4(1) of the ROC (which the plaintiff's counsel relied upon for the wrong reason that it entitles the plaintiff to apply to court to join the intended parties as defendants). The AR below, thus misled, took the same approach as the counsel for the intended parties in dismissing the plaintiff's application. I set out both of the aforementioned provisions for convenience:

> **Joinder of parties (O. 15, r. 4)**
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> 4.—(1) Subject to Rule 5(1), 2 or more persons may be joined together in one action as plaintiffs or as defendants with the leave of the Court or where —
>
> (a) if separate actions were brought by or against each of them, as the case may be, some common question of law or fact would arise in all the actions; and
>
> (b) all rights to relief claimed in the action (whether they are joint, several or alternative) are in respect of or arise out of the same transaction or series of transactions.
>
> […]
>
> **Misjoinder and nonjoinder of parties (O. 15, r. 6)**
>
> 6.—(1) […]
>
> (2) Subject to the provisions of this Rule, at any stage of the proceedings in any cause or matter, the Court may, on such terms as it thinks just and either of its own motion or on application —
>
> (a) […]
>
> (b) order any of the following persons to be added as a party, namely:
>
> (i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in the cause or matter may be effectually and completely determined and adjudicated upon;
>
> (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

10 Order 15, r 4(1) of the ROC allows a plaintiff to join defendants without leave of court as long as the two conditions set out therein are made out. On the other hand, Order 15, r 6(2)(b) allows the court to intervene to join a party when the plaintiff would not otherwise be able to (*ie*, when r 4(1)

does not apply) on account of that party being a "necessary" one or one between whom and an existing party to the action there is some question or issue related to the relief claimed that would be "just and convenient" for the court to determine. It is clear that the substantive conditions for joinder under the two provisions are different, and that it would be a mistake to ignore the former. *Singapore Civil Procedure 2020, vol 1* (Chua Lee Ming gen ed) (Sweet & Maxwell, 10th Ed, 2020) at para 15/6/2 explains the related, but different, purposes of both provisions as follows:

> [The two provisions ensure] that the right parties are before the court in that r.4 covers joinder of the right parties whilst r.6 gives power to the court to intervene if the joinder is wrong or where a non-party should be made a party.

11 In this case, my view is that the two conditions in O 15, r 4(1) of the ROC have been made out. Based on the proposed amended statement of claim, the plaintiff intends to plead, *inter alia*, that:

> (a) the first and second defendants and the five intended parties are jointly and/or severally liable to him as parties to an unlawful means conspiracy; and
>
> (b) alternatively, that they are jointly and/or severally liable in respect of the misrepresentations made to him under "section 2 of the Misrepresentation Act".

It is clear that if the aforementioned claims were brought separately against the said parties, the different actions would share common questions of fact and law as to the existence of, and liability for, any conspiracy and/or misrepresentations. Further, the reliefs claimed in this action are in respect of the same series of transactions – namely, the transfers totalling US$500,000 by the plaintiff.

12 There is, therefore, no impediment to the plaintiff joining the five intended parties without leave and I will allow the plaintiff's appeal in respect of that issue. That being the case, I would also allow the plaintiff's appeal so far as the application for leave to amend the writ and statement of claim under O 20, r 5(1) of the ROC is concerned. For the reasons already discussed above, however, I do not think that the draft amendments to the statement of claim put forward by the plaintiff are satisfactory. They will benefit from a fresh look and clearer pleading - for the sake of the judge who may have to hear this case. I therefore direct that the plaintiff file a new amended statement of claim within two weeks from the date of this judgment. He may wish to take the opportunity to think through his claim and clean up the mess that brought about this appeal, and for that reason I order no costs here and below.