

Autoexport & EPZ Pte Ltd (formerly known as AJ Towing (S) Pte Ltd) v TOW77 Pte Ltd
[2021] SGHC 89

Case Number : Originating Summons No 1064 of 2020 (Registrar's Appeal No 24 of 2021)
Decision Date : 15 April 2021
Tribunal/Court : General Division of the High Court
Coram : Chua Lee Ming J
Counsel Name(s) : Michael Moey Chin Woon and Glenda Lim Jia Qian (Moey & Yuen) for the appellant; Rajwin Singh Sandhu (Rajwin & Yong LLP) for the respondent.
Parties : Autoexport & EPZ Pte Ltd (formerly known as AJ Towing (S) Pte Ltd) — TOW77 Pte Ltd

Courts and Jurisdiction – District Court – Transfer of cases

Courts and Jurisdiction – District Court – Power

15 April 2021

Chua Lee Ming J:

1 This was an appeal by Autoexport & EPZ Pte Ltd (“AEPL”), against the decision of the Assistant Registrar (“AR”) dismissing its application to transfer the whole of District Court Suit No 2021 of 2020 (“DC 2021”) to the General Division of the High Court (the “High Court”). In DC 2021, TOW77 Pte Ltd (“TPL”) and AEPL are the plaintiff and defendant, respectively.

2 I dismissed the appeal for the reasons set out below.

Background

3 Both AEPL and TPL are in the business of providing towing services. On 27 February 2020, they entered into an agreement (“the Agreement”), under which AEPL was to sell its towing business, including its seven tow-trucks and ongoing towing contracts, to TPL for \$550,000, to be paid by way of a down-payment of \$50,000 and ten subsequent monthly instalments of \$50,000.

4 On the same day (27 February 2020), TPL paid the down-payment of \$50,000. TPL did not pay any of the subsequent monthly instalments. However, on 21 March 2020, TPL paid AEPL \$10,000 and sometime later, TPL gave AEPL a cheque for \$490,000, post-dated to 30 June 2020. AEPL presented the cheque for payment on 30 June 2020; the cheque was dishonoured because TPL had stopped payment on the cheque. The circumstances surrounding the payment of \$10,000 and the issuance of the cheque were in dispute.

5 On 31 August 2020, TPL commenced DC 2021 against AEPL, alleging fraudulent misrepresentation and breach of the Agreement, among other things. The principal relief sought by TPL was payment of a sum of \$123,140.22 (which included the payments of \$50,000 and \$10,000 that TPL had made).

6 On 28 September 2020, AEPL filed its defence and counterclaim. The counterclaim was for the sums of \$490,000 in respect of the dishonoured cheque issued by TPL, and \$14,781.83 being

expenses which AEPL claimed it incurred as a result of TPL's breach of the Agreement (after setting off against sums which AEPL admitted to be owing to TPL).

7 On 22 October 2020, AEPL filed the present application for the whole of DC 2021, alternatively, the counterclaim, to be transferred to the High Court on the ground that its counterclaim exceeded the jurisdiction of the District Court. AEPL relied on ss 54B and 54E of the State Courts Act (Cap 321, 2007 Rev Ed) ("SCA").

8 On 26 January 2021, the AR dismissed AEPL's application: *Autoexport & EPZ Pte Ltd (formerly known as AJ Towing (S) Pte Ltd) v Tow77 Pte Ltd* [2021] SGHCR 1. On 2 February 2021, AEPL filed a notice of appeal against the AR's decision.

Sections 54B and 54E of the State Courts Act

9 Section 54B SCA provides as follows:

General power to transfer from State Courts to General Division of High Court

54B.—(1) Where it appears to the General Division of the High Court, on the application of a party to any civil proceedings pending in a State Court, that the proceedings, by reason of its involving some important question of law, or being a test case, or for any other sufficient reason, should be tried in the General Division of the High Court, it may order the proceedings to be transferred to the General Division of the High Court.

(2) An order under subsection (1) may be made on such terms as the court sees fit.

10 Section 54E provides as follows:

Transfer of counterclaim from State Courts to General Division of High Court

54E.—(1) Where, in any civil proceedings pending in a State Court, any counterclaim or set-off and counterclaim of any defendant involves a matter beyond the District Court limit, any party to the proceedings may apply to the General Division of the High Court, within such time as may be prescribed by Rules of Court, for an order that the whole proceedings, or the proceedings on the counterclaim or set-off and counterclaim, be transferred to the General Division of the High Court.

(2) On any such application or on its own motion, the General Division of the High Court may, as it thinks fit, and on such terms as it sees fit, order —

(a) that the whole proceedings be transferred to the General Division of the High Court;

(b) that the whole proceedings be tried in the State Courts; or

(c) that the proceedings on the counterclaim or set-off and counterclaim be transferred to the General Division of the High Court and that the proceedings on the plaintiff's claim and the defence thereto other than the set-off (if any) be tried in the State Courts.

...

(4) Where no application is made under subsection (1) or where it is ordered that the whole proceedings be tried in the State Courts, such State Court shall have jurisdiction to try the proceedings, notwithstanding any other provision of this Act.

11 The District Court limit is \$250,000: s 2 SCA.

Whether an order for a transfer to the High Court should be made under s 54B SCA

12 AEPL submitted that the fact that its counterclaim exceeded the District Court's jurisdiction constituted "sufficient reason" under s 54B(1) SCA. AEPL relied on *Keppel Singmarine Dockyard Pte Ltd v Ng Chan Teng* [2010] 2 SLR 1015 ("*Keppel Singmarine*"). In that case, the Court of Appeal held (at [16]–[17]) that:

(a) The likelihood of a plaintiff's damages exceeding the jurisdictional limit of the District Court would, ordinarily, be regarded as "sufficient reason" for a transfer to the High Court under s 54B SCA.

(b) The mere existence of a "sufficient reason" does not automatically entitle a party to have the proceedings transferred to the High Court. The exercise of the court's discretion under s 54B requires a balancing of the respective competing interests of the parties. In particular, the court needs to assess the prejudice that might be visited upon the party resisting such a transfer.

13 In *Keppel Singmarine*, the plaintiff commenced action in the District Court, claiming damages suffered as a result of an industrial accident. The plaintiff's former solicitors had quantified the total damages to be in the region of \$725,000 but no steps were taken to transfer the matter to the High Court. After the parties had entered a consent interlocutory judgment with damages to be assessed, the plaintiff applied to transfer the District Court action to the High Court. The High Court allowed the application. The Court of Appeal reversed the High Court's decision. Although the plaintiff had shown sufficient reason, the Court of Appeal found that transferring the proceedings to the High Court would result in real prejudice to the defendant. First, the defendant had agreed to the consent judgment on the basis that the extent of its liability would be capped at the District Court limit (at [18]). Second, the application to transfer proceedings was made almost four years after the consent interlocutory judgment had been entered; both parties had accepted and relied on the consensual agreement for a substantial period of time (at [19]). Third, even if the consent order was to be set aside, the parties might have to re-litigate their respective liabilities; to require the defendant to defend its case on liability despite the significant lapse of time since the accident occurred would be severely prejudicial to its interests (at [20]).

14 I agreed with the AR that AEPL's reliance on *Keppel Singmarine* was misplaced. In *Keppel Singmarine*, it was the plaintiff who was making the application to transfer his claim from the District Court to the High Court. It was in that context that the Court of Appeal held that the likelihood of a plaintiff's damages exceeding the jurisdictional limit of the District Court would, ordinarily, be regarded as "sufficient reason" for a transfer to the High Court. Without a transfer to the High Court, under s 19(4) SCA, a plaintiff's recovery in the District Court would be subject to the District Court limit, unless the defendant agrees otherwise pursuant to s 23 SCA (which provides for jurisdiction by agreement).

15 Where it is the *counterclaim* that exceeds the District Court limit, the position is very different. Section 54E SCA provides for applications to transfer to the High Court where any counterclaim or set-off and counterclaim involves a matter beyond the District Court limit. Under s 54E(4) SCA, if no application is made under s 54E(1) or an order is made for the whole proceedings (which would include the counterclaim or set-off and counterclaim) to be tried in the State Courts, the State Courts' jurisdiction to try the proceedings will not be subject to the District Court limit.

16 AEPL submitted that under s 54E(4) SCA, the District Court's jurisdiction would still be subject to the District Court limit under s 19(4) SCA. I disagreed. Section 54E(4) states in no uncertain terms that the State Court hearing the matter "shall have jurisdiction to try the proceedings, notwithstanding any other provision of this Act" (emphasis added). Clearly, s 19(4) cannot limit the State Court's jurisdiction where s 54E(4) applies. There is good reason for this. Even if a defendant's counterclaim exceeds the District Court limit, s 54E(2) clearly gives the court a discretion to order the whole proceedings to be tried in the State Courts. If such an order is made, a defendant would be unfairly prejudiced if his counterclaim is subjected to the District Court limit. A defendant has no say over which court a plaintiff decides to commence his action in.

17 In my view, the likelihood of AEPL's counterclaim exceeding the District Court limit did not constitute "sufficient reason" for a transfer to the High Court under s 54B SCA. *Keppel Singmarine* did not assist AEPL. As AEPL did not raise any other ground for a transfer under s 54B, its application based on s 54B failed.

Whether an order for a transfer to the High Court should be made under s 54E SCA

18 Section 54E(1) SCA applies where, in proceedings pending in a State Court, any counterclaim or set-off and counterclaim of any defendant involves a matter beyond the District Court limit. As is clear from s 54E(2), even if this requirement is satisfied, the court has a discretion whether or not to order a transfer to the High Court. In *Keppel Singmarine*, the Court of Appeal held that the court has to balance the respective competing interests of the parties, in exercising its discretion whether to order a transfer to the High Court under s 54B SCA. In my view, this balancing exercise is likewise called for when considering an application under s 54E, perhaps more so given that (pursuant to s 54E(4)) the counterclaim will not be subject to the District Court limit if a transfer order is not made.

19 In carrying out this balancing exercise, the court should consider the applicant's reasons for asking for a transfer to the High Court (notwithstanding the fact that if the proceedings are ordered to be tried in the State Courts, his counterclaim or set-off and counterclaim will not be subject to the District Court limit), any prejudice that the applicant could suffer if no order is made for a transfer to the High Court (although any such prejudice is likely to be exceptional), and any prejudice that any other party could suffer if the transfer order is made.

20 AEPL satisfied s 54E(1) SCA in that its counterclaim involved a matter beyond the District Court limit. However, I agreed with the AR that in the present case, there was no reason to transfer the whole of the proceedings in DC 2021, or the counterclaim alone, to the High Court. AEPL's only ground for its application was its claim that its counterclaim exceeded the District Court limit. There was no important or complex issue of law or fact, and there was no prejudice to AEPL if the proceedings remained in the District Court. I also agreed with the AR that it was not appropriate to transfer the counterclaim alone to the High Court since the claim and counterclaim arose largely from the same set of facts. It was undesirable that the claim and counterclaim should be heard by different courts with the attendant risk of conflicting findings.

21 In the course of the hearing before me, AEPL submitted that it had to make the application in the present case because, under s 54E(4) SCA, the District Court would have jurisdiction to try the counterclaim in DC 2021 and award damages exceeding the District Court limit only if the High Court made an express order for the whole of the proceedings to be tried the State Courts. I disagreed with AEPL. Section 54E(4) SCA is clear. It also applies where no application is made under s 54E(1). In fact, AEPL did not have to make this application at all.

22 AEPL also submitted that it had to appeal against the AR's decision because the AR did not

make an express order for the whole of the proceedings in DC 2021 be tried in the State Courts, as provided in s 54E(4). I disagreed with AEPL. Leaving aside the fact that AEPL did not ask for such an express order, its application was to transfer the whole of the proceedings in DC 2021, alternatively, to transfer the counterclaim, to the High Court. The effect of the AR's dismissal of AEPL's application was clear – the whole of the proceedings in DC 2021 was to be tried in the State Court. There was no other way to interpret the dismissal of AEPL's application. This interpretation is also supported by the AR's judgment in which he stated (at [80]) that "[c]onsolidation of the proceedings is plainly desirable ... [and] it would be more expedient for these proceedings to continue in the District Court."

Conclusion

23 I dismissed the appeal and ordered the appellant to pay costs of the appeal fixed at \$2,500 inclusive of disbursements.