Re Flint Charles John Raffles QC
[2001] SGHC 47

Case Number : OM 31/2000

Decision Date : 13 March 2001

Tribunal/Court : High Court

Coram : Lai Kew Chai J

Counsel Name(s) : Vinodh Coomaraswamy and David Chan (Shook Lin & Bok) for the plaintiff; Cho Sooi Yoon for the Law Society; Eric Chin (Attorney General's Chambers) for the Attorney General; Bernadette Balan and Kueh Ping Yang (Haridass Ho & Partners) for the 1st, 2nd, 6th, 8th, 9th, 10th, 12th, 13th, 14th and 27rd defendants

Parties : —

Legal Profession – Admissionad – ad hoc – Three-stage test for admission – Whether case of sufficient difficulty and complexity that local counsel unable to adequately and ably handle – Whether circumstances of case warranted court exercising discretion in favour of admission – Factors non-exhaustive – s 21(1) Legal Profession Act (Cap 161, 2000 Ed)

: By Originating Motion filed on 16 November 2000 Mr Charles John Raffles Flint QC (`Mr Flint`) of Blackstone Chambers, Blackstone House, Temple, London EC4Y 9BW sought ad hoc admission under s 21 of the Legal Profession Act (Cap 161, 2000 Ed) (`the Act`) to practise as an advocate and solicitor of this court as leading counsel for the purpose of appearing on behalf of Malaysian International Trading Corporation Sdn Bhd (`Mitco`) in Suit 280/2000/L (`the Suit`) including any interlocutory appeal proceedings in connection therewith until the final disposal of the matter. On 1 December 2000 the application was heard by me. At the conclusion of the hearing, I dismissed the application.

As I had indicated during arguments, I was guided by case law to `balance the long-term need to foster a strong and independent Bar in our own jurisdiction against the individual justice of each case which may demand that a particularly specialised and skilled Queen`s Counsel` be admitted to assist the court. I further indicated that I had prior to the hearing of the originating motion dealt with some of the urgent and significant interlocutory applications in the Suit handled by local counsel, Mr Vinodh Coomaraswamy and his team of advocates, and that having had the immense benefit of knowing the nature of the case in some depth and observing and evaluating the performance of local counsel, and particularly the level of assistance he and his team had been able, in their roles as advocates, to extend to the court, I needed to be convinced that the case is of sufficient difficulty and complexity that local counsel is unable to handle it adequately for Mitco. Further, I needed to be satisfied on the guidelines laid down by case law that a refusal of the services of a Queen`s Counsel may conceivably result in some disadvantage to the prosecution of Mitco`s case against the defendants at the trial of the Suit.

For the reasons set out in his written submissions, which he elaborated, local counsel strenuously urged for Mr Flint`s admission. However, in the end I formed the view, for the reasons which I will set out, that the case would involve issues which local counsel could, as amply demonstrated, adequately and ably handle and that Mitco`s interest at the full-blown trial would be adequately and ably served by local counsel. Accordingly the motion was dismissed. On 2 January 2001 Mr Flint, being dissatisfied with my decision, filed his Notice of Appeal. I now set out the material circumstances and the reasons for my decision.

Section 21(1) of the Act, which is reproduced below, is the relevant legislation:

> *(1) Notwithstanding anything to the contrary in this Act, the court may, for the purpose of any one case where the court is satisfied that it is of sufficient difficulty and complexity having regard to the circumstances of the case, admit to practise as an advocate and solicitor any person who -*
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> *(a) holds her Majesty`s Patent as Queen`s Counsel;*
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> *(b) does not ordinarily reside in Singapore or Malaysia but who has come or intends to come to Singapore for the purpose of appearing in the case; and*
>
> *(c) has special qualifications or experience for the purpose of the case.*

In this application, the impressive credentials of Mr Flint clearly fulfilled the requirements of s 21(1)(c) and that requirement was not in issue before me at all.

As was noted by Chan Sek Keong J (as he then was) in Re Oliver David Keightley Rideal QC [1992] 2 SLR 400 at 402D, the object of the amendment to s 21(1) of the Act, which was effected by Act No 10 of 1991 and which took effect from 1 February 1991, was to lay the foundation for the development of a strong local bar by `the imposition of more stringent conditions for the admission of Queen`s Counsel to appear in our courts, but at the same time, to continue to allow litigants to avail of their services in appropriate cases`. The amendments required the court to take into consideration two additional requirements: (1) the case must be of sufficient difficulty and complexity; and (2) the circumstances of the case.

Our courts have developed a three-stage test when considering an admission under s 21(1) of the Act. This test is best summarised in **Re Caplan Jonathan Michael QC (No 2)** [1998] 1 SLR 440 where Yong Pung How CJ stated in [para] 11 on p 444 as follows:

> *The requirements of the above provision were considered at length by the Court of Appeal in **Price Arthur Leolin v A-G & Ors** [1992] 2 SLR 972 . In its judgment, the court articulated a three-stage test for admission under s 21(1). At the first stage, the applicant must demonstrate that the case in which he seeks to appear contains issues of law and/or fact of sufficient difficulty and complexity to require elucidation and/or argument by a Queen`s Counsel. Such difficulty or complexity is not of itself a guarantee of admission, for the decision to admit is still a matter for the court`s discretion. At the second stage, therefore, the applicant must persuade the court that the circumstances of the particular case warrant the court exercising its discretion in favour of his admission. Finally, he has to satisfy the court of his suitability for admission.*

In ***Re Caplan Jonathan Michael QC (No 2)*** (supra) the applicant sought admission to appear in a long trial in a suit in which there were claims and counterclaims in contract containing different terms for alleged breaches of a contract in relation to the development of certain commercial and retail projects in Shanghai; namely, the New Time Project and the Mayflower Project. Restitution of sums paid was also sought. The plaintiffs alleged that the defendants had orally agreed to some commercial commitments. The defendants denied those allegations and they in turn alleged that through the agency of a named individual, who was alleged to have acted on behalf of the plaintiffs, they the plaintiffs had agreed that the two projects would be developed with certain Chinese parties and that the defendants had agreed to invest in those projects only on the basis that they would be given

shareholding interests in the company designated as the Chinese parties` joint venture partner. The defendants claimed that the plaintiffs in breach of their oral agreement failed to ensure that the defendants were given such interests. In admitting Mr Caplan, the Chief Justice in exercising his discretion took into account (1) the highly forensic nature of the suit in question, in which skills of advocacy, including prominently the art of cross-examination, were needed; and (2) the fact that the commercial reputation of the defendants who wanted Mr Caplan to represent them was at stake. The Chief Justice therefore acceded to the demands of individual justice to the defendants and ordered the admission of the Queen`s Counsel.

It is self-evident that the three factors which impressed the Chief Justice are non-exhaustive. There are other factors identified in the other cases. Section 21(1) requires the court to have regard, ie take into account, `the circumstances of the case`. Although circumstances vary from case to case, a court must always be concerned that those factors are material and have a bearing on its balancing act, as stated earlier, whether it or a combination of factors tilted one way or the other. Indeed, in **Price Arthur Leolin v A-G** [1992] 2 SLR 972 , the Court of Appeal indicated at p 976I that `[o]nce the court is satisfied that the case is difficult and complex enough to warrant the assistance of a Queen`s Counsel, the next consideration must be the exercise of discretion`. In balancing the long-term need to foster a strong and independent Bar in our own jurisdiction against the individual justice of each case which may demand the assistance of a Queen`s Counsel, courts are directed to consider a list of factors, evidently non-exhaustive, such as the complex legal or factual issues in a long trial which require exceptional forensic skills in mastering, marshalling a complex web of facts and skills in cross-examination and re-examination.

After nearly a decade of the working out of s 21(1) of the Act, it is in my view fair to say that the local Bar has matured and is acquitting itself commendably. There has been forged and carefully nurtured, particularly over the last ten years, a body of Senior Counsel, potential senior counsel and an impressive group of young advocates and solicitors, both in the public service and in the private sector, with excellent academic credentials and a right attitude. The process continues during which opportunities must be judiciously offered and challenges thrown, though never at the expense of justice to any litigant before our courts. The quest in Singapore to cultivate human resources in legal services has been emphasised in the modern, global context of trade and commerce in which cross border problems arise frequently, and by reason of relentless growth in technology which has become the prime handmaiden of international exchanges, they often arise in real time. I was told in a recent case that `in a crisis, there is no time zone`. Our goal in Singapore is always to ensure that our legal system provide effective and fair remedies in civil disputes which spill over national borders. The present application for ad hoc admission of a Queen`s Counsel afforded the opportunity to look into the question of legal services at a greater depth which are enlisted in an alleged transnational commercial fraud. I will later elaborate on the nature of those services and address the question whether Mitco had any reason to be concerned that it would be disadvantaged if a Queen`s Counsel was not admitted to represent its interest in the Suit.

I begin by turning to the background. Mitco is a company incorporated in Malaysia and is a wholly owned subsidiary of Petroliam Nasional Bhd (`Petronas`). Petronas is an oil and gas company wholly owned by the Government of Malaysia. Mitco`s business is that of trading in non-oil petroleum products and acts as a trading house for other non-oil commodities. Its registered office and principal place of business is at Tower 1 of Petronas Twin Towers.

On 17 May 2000 Mitco filed a generally endorsed writ of summons initially against 22 defendants. Eight other defendants were later added. I will set out the allegations which Mitco have made. For a quick overview, which is useful at this stage to state, Mitco is claiming against each or all 30 defendants, inter alia, damages for conspiracy to defraud, equitable compensation and/or damages for dishonest

assistance of breach of trust and/or inducement to breach of contract. In terms of remedies, they seek typically personal and proprietary remedies against the defendants. By the latter remedy Mitco seeks to lay its hands on a specific fund or its traceable substitute. There will arise conceivably defences in several jurisdictions and the services of lawyers in those jurisdictions will have to be engaged.

In the Suit, Mitco claims that it was a victim of a massive fraud in which its Managing Director and Acting Chief Executive Officer, one Azalan Mior Zainadi (`Azalan`) in breach of contract and his fiduciary duties caused it to enter into a series of loss-making contracts under which it agreed to and supplied a vast quantity of palm olein to Inter American`s Group LLC (`IAG`), the 15th defendant in the Suit. Mitco asserts that since those contracts it found out that IAG at all material times was a shell company without any substantial assets, business or any commercial means to meet its commitments.

Mitco also claims against Interamerica Asia Pte Ltd (`IAPL`), IAG, their directors and associated companies and some individuals such as Shunichi Nonaka (`Nonaka`), Choo Siew Lohk (`Choo`) and William Linday Cannon (`Cannon`) for damages for conspiracy to defraud, deceit and for proprietary remedies arising from their dishonest assistance in the breaches of trust and/or fiduciary duties on the part of employees of Mitco. Mitco is also asserting restitutionary remedies in respect of the proceeds of sale of Mitco`s palm olein deliveries. Twelve of the defendants reside or operate in USA, a number in Singapore, Malaysia, Peoples` Republic of China (including Hong Kong), Republic of China, Taiwan, Brazil and the Virgin Islands.

In the amended statement of claims, Mitco asserts that both Azalan and Najib (another senior employee) caused Mitco to enter into 137 so-called `spot sale contracts` for the supply of 456,150 MT of palm olein by Mitco to IAG between November 1998 and June 1999 for a total value of US$228,150,600. The `contracts` were arranged between Azalan and Najib, who were senior employees of Mitco and purportedly on behalf of Mitco of the one part and Nonaka, acting for IAG (and reporting to Cannon) on the other part. Those contracts were purported to be back to back with purchases made by Mitco from KD Energy Co Ltd, a Malaysian broker and trader in palm olein. As Mitco points out, oddly enough, whilst Mitco was obliged to pay the purchase price within 48 hours of delivery, the terms of sale to IAG were varied to allow 90 days credit.

To give an idea of the size of Mitco`s `sales` to IAG, the supplies at its peak amounted to 20% of the entire palm olein production of Malaysia. Although Mitco had delivered palm olein to IAG in excess of US$154m, Mitco only received US$58m, leading to an initial loss of US$96m. However, Mitco managed to reduce this loss to approximately US$87m, exclusive of interest.

According to Mitco, their bankers reported in June 1999 that some of the letters of credit procured by IAG to finance the purchases were fraudulent. The other letters of credit procured by IAG proved to be worthless because the terms on which they could be drawn prevented Mitco from collecting on them prior to the expiry of the letters of credit. Mitco alleges that it was not paid at all under any of the letters of credit despite the shipments. It asserts that IAG had defaulted on the sale and purchase contracts, having sold on the deliveries to third parties and dissipated the proceeds of sale to various persons or entities around the world.

Mitco points to several extraordinary features of the alleged sales. Internally, the contracts with IAG were not authorised by the Board of Directors of Mitco; nor were they reported to the Board. The palm olein contracts were concealed from the Board until late June 1999 when concerns were raised with members of the Board by employees in Mitco`s Finance and Accounting Division. Secondly, Mitco asserts that another badge of fraud was the fact that IAG and IAG`s associated companies were

permitted to take deliveries of the consignments of palm olein in advance of the opening of any letter of credit and notwithstanding the fact that IAG was at the material times in default of its payment obligations in respect of previous deliveries.

I was told that Mitco discovered the fraud in or about August 1999. Intensive investigations followed. It was assisted by a firm of English solicitors, Theodore Goddard and a team of forensic accountants from Ernst & Young in London. Mr Flint was instructed by the London firm of solicitors and he has been co-ordinating various legal proceedings in Singapore, London, Malaysia, Hong Kong and Jersey. It was indicated that Mitco intended to call at least nine witnesses, including the former Chairman of Mitco and two experts in the field of palm olein trading.

On 17 May 2000, contemporaneous with the commencement of the Suit, Mitco obtained from our High Court a search and seizure order of the premises belonging to IAPL, HPL, Nonaka, Choo and HIHPL. In addition, it obtained an injunction prohibiting the disposal of assets worldwide up to the specified limit against, inter alia, IAPL, HPL, Nonaka, Choo, HIHPL, Tiong Chiong Hing, Fu Rong Hua, Wu, HAPL and Cannon. It was disclosed by Mitco that about 20,000 pages of documents were seized from IAPL`s premises at 6 Battery Road pursuant to the Anton Piller order.

Not unexpectedly, urgent interlocutory applications were filed by Mitco arising from what they had been able to glean from the documents seized and the disclosures made and in respect of the disclosures by certain defendants their sufficiency, fullness and candour were seriously questioned. Mitco accordingly applied for the court`s leave to use documents and information disclosed by the defendants in question for the purposes of other proceedings in Singapore and in other jurisdictions in Mitco`s applications in those jurisdictions for injunctive reliefs. Related proceedings had to be launched in Switzerland and Jersey to trace the proceeds of the alleged fraud. They also applied for leave to cross-examine certain defendants on their affidavits of disclosure which they were ordered by the High Court to file. Local counsel for Mitco went into the documentary trails in some detail and persuaded me to relax certain implied undertakings which Mitco had made as to disclosures and use of information obtained pursuant to the search and seize orders.

Local counsel also made out a case for an order to cross-examine certain defendants on their affidavits of disclosure. It was subsequently conducted over eight days and the transcript of the cross-examination runs to over 1,200 pages.

By other interlocutory applications, local counsel was successful in obtaining from me orders for certain defendants to repatriate their US$ deposits overseas to Singapore.

Arising from and in aid of the Suit Mitco also commenced proceedings in London against Cannon. In those proceedings, Mitco obtained the usual search and seize orders, an order requiring Cannon to make full and frank disclosure of his assets and those of the defendants in the Suit and the whereabouts of such assets or the traceable proceeds and an order requiring Cannon to deliver up his passport and travel documents to the Tipstaff of the English High Court of Justice. In consequence, a large number of documents were obtained and copied which were in the possession and/custody of Cannon upon his arrival in London. Cannon was also cross-examined in the English High Court as to the completeness of his various affidavits of disclosure and the movements of the payment received by IAG.

As was disclosed in the affidavit filed in support of the application for admission, Mitco was of the view that US$124m paid by IAG`s buyers to IAG (or its nominees) in respect of the palm olein supplied by Mitco was distributed as follows. IAPL and HIHPL retained US$13m. Mitco was paid US$19m. The sum of US$29m was paid to Tsai Cheng Wen (`Tsai`), the 23rd defendant and a Taiwanese, at his

account at Standard Chartered Bank in Hong Kong. IAG paid US$55m into its account at Harlingen Bank, Texas, USA. US$2 million was paid to Tiong, the 9th defendant, at his account at Midland Offshore, Jersey. He was ordered by me to repatriate this sum back to Singapore to abide by the outcome of the Suit. The sums of US$1m and US$2m were paid to KD Energy Co Ltd and Pan Century but Choo and Wu, who controlled the companies, were ordered by me to repatriate the moneys to Singapore on the same basis.

It is Mitco`s case that Nonaka received, inter alia, US$11.4m from the US$29m paid to Tsai. The bulk of it was remitted to his account at Coutts Bank in Hong Kong. Tsai paid out the balance to a number of entities and no doubt investigations will be pursued to see if those payments were to bona fide counter parties for value without notice of the fraud, `the darling of equity`. As for the substantial sum of US$55m (other than the US$33m remitted to Mitco) received by IAG Mitco further asserts that IAG appears to have applied it towards a number of speculative `investments` in the USA, Spain and Mexico.

Undoubtedly, local counsel has been greatly assisted by the preparatory work done in London by the team of investigators and Queen`s Counsel and his junior. I noted that the pleadings were drafted by junior counsel in London and that Mr Flint has been co-ordinating the prosecution of several transnational pieces of litigation. The bulk of the investigation of the alleged fraud and other breaches of the law, which if true was perpetrated in Kuala Lumpur accompanied by conspiratorial acts carried out both there and overseas, was sufficiently completed for the commencement of legal proceedings.

The tracing and the preservation of Mitco`s traceable assets or substitutes thereof are conceivably the key tasks for Mitco and its professional advisers. In this case, such efforts are directed from Kuala Lumpur and London. American lawyers practising in Texas and other States in USA may have to be enlisted. They involve investigative work both by forensic commercial and accounting investigators with, conceivably, the assistance of court orders for seizure and disclosure.

I now come to the nature of the legal services required for the prosecution of this Suit. The first notable feature is that nearly all the work that matters or could potentially matter would have been done before the trial proper. Before affidavit evidence could be filed in accordance with our Rules of Court, the material evidence must be procured and available. The overall question is whether the defendants were engaged in a bona fide business transaction, and were in receipt of commission at rates normally obtained in the trade of palm olein, or were they participants in a massive fraud. At the bottom of it is the conspiracy to defraud or dishonest assistance in breaches of fiduciary duties or both. Undoubtedly, this is stating the case at a general level of abstraction. But it is not canvassed before me that any of factual issues could not be forensically articulated by local counsel nor is it asserted that there will arise any legal issue which may conceivably involve any extensive revisiting of any body of case law and the resetting of any boundaries.

It is to be expected that such assistance and co-ordinating efforts which local counsel has received from Mitco`s team of investigators and Mr Flint and his junior will continue to be available. So far as the Suit is concerned London, Malaysian and Singapore solicitors would be engaged in the solicitors` phase of the work. This part of the litigation is undertaken with such counsel`s advice as solicitors shall seek or require. They will have to do with the gathering of the evidence, drafting the affidavit evidence-in-chief and preparation of the bundles of documents, including the Core Bundle of documents. So far as expert evidence in connection with palm olein trading, including trade by means of letters of credit, is concerned it has to be noted that the evidence of the experts are captured in the first place by affidavit evidence-in-chief. In so far as skills in re-examination are called for, there is no suggestion that much cross-examination would be at large as defendants would, if and when the case ultimately fights, produce contrary expert opinion. The case of any competing expert would have

been known well in advance of the trial. In all these tasks, local counsel will no doubt work closely with Mr Flint.

It bears repetition that so far as proprietary and evidentiary tracing is concerned, the investigative part of them have to be done elsewhere than Singapore and such parts as are proprietary will have to be pursued in the jurisdiction or jurisdictions in which Mitco`s proceeds of sale or substitutes are found or where the dishonest recipients are found: see **Royal Brunei Airlines v Philip Tan Kok Ming** [1995] 2 AC 378 and other relevant cases cited in **Banque Nationale de Paris v Hew Keong Chan Gary** [2001] 1 SLR 300 .

In sum, Mitco`s chances of recovering their moneys from the alleged fraudsters and dishonest assistants or recipients depend on the outcome of their forensic battles in jurisdictions other than Singapore. So far as its forensic battle in Singapore is concerned, its interest has been more than adequately served by local counsel assisted by its team of professional advisers. Such assets as are disclosed are now preserved to abide by the outcome of the Suit. I am satisfied that Mitco will continue to be well served by local counsel. In the circumstances, I exercised my discretion after weighing all the circumstances in the course of my balancing exercise and dismissed the application.

Outcome:

Application dismissed.