

Banque Cantonale Vaudoise v RBG Resources Plc and Others (Lim Tau Hee and Others,
Third Parties)
[2002] SGHC 264

Case Number : Suit 542/2002, SIC 2132/2002
Decision Date : 07 November 2002
Tribunal/Court : High Court
Coram : Woo Bih Li JC
Counsel Name(s) : Jainil Bhandari and Adrian Tan (Rajah & Tann) for the plaintiff; Janice Lai (Lee & Lee) for the first defendant; Kenneth Lie and R Doraisamy (Joseph Tan Jude Benny) for the second defendant; David Kong (Shook Lin & Bok) for the third party; R Srinivathsan (Haridass Ho & Partners) for the interveners and ING Bank N V; Lawrence Teh (Rodyk & Davidson) for Credit Lyonnais
Parties : Banque Cantonale Vaudoise — RBG Resources Plc; Fujitrans (Singapore) Pte Ltd; Banque Bruxelles Lambert (Interveners) — Lim Tau Hee; Lim Beng Heng t/a Outshine Services Trading; WMC Trading Pte Ltd

Judgment

GROUNDS OF DECISION

1. This was an application by the second defendant Fujitrans (Singapore) Pte Ltd ('Fujitrans') for a stay of all proceedings commenced by the plaintiff, a bank known as Banque Cantonale Vaudoise ('BCV').
2. From about September 1998 to about April 2002, BCV had been financing the purchases of metal commodities by the first defendant, which was known as Allied Deals Plc and then RBG Resources Plc ('RBG'). During arguments, Counsel have referred to the metal commodities as 'metal cargo' and I will adopt this description but in plural as there are different lots of cargo and different types of metal cargo involved, for example, nickel cathodes, tin ingots, zinc ingots and copper cathodes. BCV says that it financed the purchase of the metal cargoes in reliance on documents emanating from various warehousemen, one of whom was Fujitrans, confirming that the metal cargoes were held to the order of BCV. BCV also alleges that from time to time, RBG would inform it that RBG had sold the metal cargoes, purchased with financing from BCV, and consequently BCV would send stock releases to Fujitrans to instruct it to release the metal cargoes.
3. BCV's claims against Fujitrans relate to various groups of metal cargoes, one of which is listed in Schedule 3 of its Statement of Claim ('the Schedule 3 claim' and 'the Schedule 3 cargoes' respectively). BCV alleges that the Schedule 3 cargoes never existed or, if they did, are no longer in the warehouse of Fujitrans. As regards the metal cargoes which are still in Fujitrans' warehouse, and over which BCV claims security, BCV has agreed to a stay of this claim pending the determination by the court of competing claims to such cargoes. However, BCV does not agree to a stay of its claim in respect of the Schedule 3 cargoes.
4. RBG is a company incorporated in the United Kingdom. Winding up orders over RBG have been made in the United Kingdom and in Singapore and liquidators appointed. Similar orders may have also been made in other jurisdictions in which RBG conducted business.
5. It is alleged by various parties that RBG had obtained financing from various banks to purchase metal cargoes and operated a fraudulent scheme whereby it, inter alia, obtained financing to purchase non-existent metal cargoes and/or obtained financing from more than one bank to purchase the same metal cargoes without informing the banks involved of this. Accordingly, the security which it purportedly granted to each bank over each metal cargo was in respect of non-existing metal cargo, metal cargo subsequently sold but for which the bank or banks have not been paid or metal cargo still remaining in warehouses, including Fujitrans' warehouse, for which there is more than one claimant.
6. According to Mr Kenneth Lie, Counsel for Fujitrans, six banks have filed six actions against Fujitrans. In three of them, RBG is named as a defendant too. I understand that one of the banks is claiming not as a secured creditor but as a purchaser of certain metal cargoes. As there were several claimants over the metal cargoes in its warehouse, Fujitrans applied for interpleader relief and for a stay of the actions. The

application for interpleader relief was in respect of existing metal cargoes in its possession, custody or control, and not in respect of non-existent metal cargoes or cargoes which no longer exist. I have given directions in respect of the application for interpleader relief in that RBG is to file a fresh action as plaintiff and name the various claimants as defendants. RBG has filed such an action in Suit No 1175 of 2002/F ('the RBG action'). However, my direction pertains only to the competing claims for existing metal cargoes.

7. Fujitrans had sought a stay of the Schedule 3 claim on the basis that the RBG action to determine the validity of the various claims over the existing cargoes should be heard first as it may be that some of the existing cargoes form part of the Schedule 3 cargoes and therefore would affect the Schedule 3 claim. However, Fujitrans faced several obstacles.

8. First, BCV itself is not claiming that any of the existing cargoes is part of the Schedule 3 cargoes. Secondly, one Lim Tau Hee ('LTH'), who was an employee of Fujitrans had signed a statement dated 15 May 2002 in the presence of Fujitrans' own solicitors in which he said that the Schedule 3 cargoes do not exist. The Schedule 3 cargoes are set out in Schedule 4 of his statement, but Schedule 3 contains some more metal cargoes after BCV's own investigations. Thirdly, even if LTH's statement should be treated with caution because he had allegedly assisted RBG with the fraud, Fujitrans itself could and should have checked whether any of the Schedule 3 cargoes is found among the existing cargoes in its warehouse. On this significant point, Fujitrans could not even make a positive assertion that any of the Schedule 3 cargoes was still in its warehouse. It could only say that this may be so even though it had records regarding the movement of cargo in and out of its warehouse. True, if Mr Lim had been involved in the fraud, it may well be that Fujitrans is also a victim of the fraud. However, the point is that Fujitrans could and should have made its own investigations and ascertain the facts for itself.

9. On this third point, Mr Jainil Bhandari, Counsel for BCV submitted that in various affidavits filed for Fujitrans, Fujitrans had adopted LTH's statement. On the other hand, Mr Lie submitted that Fujitrans had been busy with various bank claims, dealing with LTH and applying for court orders since events have come to light. Fujitrans were also waiting for a survey on the metal cargoes in its own warehouse, done on the instructions of the Singapore liquidators of RBG, to be completed. I did not find this explanation to be persuasive. When Fujitrans filed its application for interpleader relief on 7 August 2002, it must have known what metal cargoes are in its warehouse. Furthermore, if it did not know by the time it filed its application, it must know by the date of the hearing of the stay application before me i.e 30 October 2002. Therefore, I did not accept Mr Lie's argument that the only basis for BCV's allegation that the Schedule 3 cargoes do not exist is the statement by LTH. I reiterate that Fujitrans itself has not asserted otherwise.

10. It seemed to me that Fujitrans had made its own investigations and was aware that none of the Schedule 3 cargoes is part of the existing cargoes but it is using the RBG action as an excuse to delay the progress of the Schedule 3 claim.

11. In the circumstances, I did not accept Mr Lie's argument about multiplicity of proceedings and the risk of an inconsistent decision if the Schedule 3 claim was not stayed pending the outcome of the RBG action. I would add that the probability of claims by other banks who do not succeed in their claims to existing metal cargoes in the RBG action or who, in any event, also have claims for non-existing cargoes or cargoes already sold, does not constitute multiplicity of proceedings by the same plaintiff i.e BCV.

12. It may be neater for BCV to await the outcome of the RBG action so that it knows how much of its claim to existing cargoes is unsuccessful and then carry on with its claim for the unsuccessful part together with the Schedule 3 claim. However, in my view, BCV is not obliged to wait for the outcome of the RBG action.

13. Mr Lie also submitted that there was no prejudice to BCV if the Schedule 3 claim is stayed. In my view, it is not for BCV to justify why it wishes to proceed with the Schedule 3 claim. The burden is on Fujitrans to satisfy the court why a stay should be granted.

14. Mr Lie also added that it would only be after the RBG action was concluded before it is determined how much BCV would recover from its security and BCV may succeed in recovering enough from its security to cover part or all of the Schedule 3 claim. In my view, this argument does not justify a stay of the Schedule 3 claim. It is for BCV to decide when it wishes to pursue the Schedule 3 claim against Fujitrans and not have to wait to see if its security over existing metal cargoes is valid and enough to cover part or all of the Schedule 3 claim as well.

15. In the circumstances, I did not grant a stay in respect of the Schedule 3 claim.

Sgd:

WOO BIH LI

JUDICIAL COMMISSIONER

SINGAPORE

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