

Chong Hon Kuan Ivan and Another v Levy Maurice and Others and Other Actions
[2005] SGHC 14

Case Number : OS 347/2002, 948/2002, RA 277/2004, 278/2004, 279/2004, 280/2004, Suit 766/2002, 280/2003

Decision Date : 25 January 2005

Tribunal/Court : High Court

Coram : MPH Rubin J

Counsel Name(s) : Foo Maw Shen and Daryl Ong (Yeo Wee Kiong Law Corporation) for plaintiffs in OS No 347 of 2002, Suit No 766 of 2002 and Suit No 280 of 2003, and for defendants in OS No 948 of 2002; Ho Chien Mien and Loong Tse Chuan (Allen and Gledhill) for sixth defendant in OS No 347 of 2002, Suit No 766 of 2002 and Suit No 280 of 2003; Prakash Mulani (M and A Law Corporation) for first to fifth defendants in OS No 347 of 2002, Suit No 766 of 2002 and Suit No 280 of 2003, and for plaintiff in OS No 948 of 2002

Parties : Chong Hon Kuan Ivan; Chang Hong Kaye Jimmy — Levy Maurice; Salomon Salto; Jean-Paul Morin; Publicis Worldwide B.V.; Publicis Groupe SA; Publicis Eureka Pte Ltd

Civil Procedure – Case management – Whether order should be made for overlapping and interlinked actions to be heard one after the other in a particular sequence.

Civil Procedure – Case management – Whether order should be made for evidence adduced in one trial to be admitted as evidence in the trial of subsequent actions.

25 January 2005

MPH Rubin J:

1 A clutch of eight notices of appeals (Civil Appeals Nos 132 to 139 of 2004), identical in content, style, purport and wording, has been lodged against a single order made by me on 23 November 2004 in Registrar's Appeals Nos 277 to 280 of 2004. The order under appeal is in two parts, the first issued on 8 November 2004 and the next a clarification on 23 November 2004. Both are no more than case-management directions dealing with the sequence of hearings of four related and overlapping actions (Originating Summons ("OS") No 347 of 2002, Suit No 766 of 2002, Suit No 280 of 2003 and OS No 948 of 2002) and the treatment of evidence adduced in one action to other actions. The said order also states that my directions are provisional in nature, and the trial judge who will be hearing the actions as well as the Registrar of the Supreme Court who will be dealing with pre-trial issues are at liberty to alter or modify the sequence and vary the directions given as they deem fit.

2 The order made by me on 8 November 2004 and the clarification made by me on 23 November 2004 read as follows:

(a) Order made on 8 November 2004:

1. The appeal from the decision of the Assistant Registrar below be allowed on the terms herein.

2. The following actions be listed with and heard one after the other before the same trial Judge in the following sequence:

(1) Originating Summons No. 347/2002/V;

- (2) Suit No. 766/2002/L;
- (3) Suit No. 280/2003/P; and
- (4) Originating Summons No. 948/2002/N.

3. Any evidence adduced in the trial of one action, shall be admitted as evidence in the trials of subsequent actions;

4. The above are made without prejudice to the discretion of the trial Judge to vary the sequence/order of the trials if necessary, or to make other orders or directions as the trial Judge deems fit;

5. There be liberty to apply; and

6. Costs of this appeal and hearing below be costs in the cause.

(b) Order made on 23 November 2004:

The order made by me on 8 November 2004 is a provisional order which purports to give the judge who would be charged with the responsibility of hearing the cases some latitude to decide how he would finally arrange the sequence and the manner of trial. There is already a liberty to apply clause in my earlier order. For the sake of clarity, I would like to add a further proviso that is, that the parties also be at liberty to apply to the Registrar and the Registrar is also authorised to re-arrange the sequence of the hearing, if the Registrar deems fit at the pre-trial conference. The term "Registrar" will include "Deputy Registrar" and "Senior Assistant Registrar".

The four actions

3 All four actions appear to have a common link and the issues seem to overlap. In this connection, it would be useful to provide a thumbnail sketch of the four actions, as can be gathered from the pleadings. It is as follows.

Parties and personalities

4 Publicis Eureka Pte Ltd ("PEK") (the sixth defendant in OS No 347 of 2002, Suit No 766 of 2002 and Suit No 280 of 2003), is a Singapore- incorporated company in the business of consultancy in all forms of advertising and publicity. It originated from a sole proprietorship called Eureka Advertising and Design Consultants in 1980. It became Eureka Advertising and Design Consultants Pte Ltd in 1993, and some time in 1997, its name was changed to Eureka Advertising Pte Ltd.

5 Chong Hon Kuan Ivan ("Ivan") (the first plaintiff in OS No 347 of 2002, the sole plaintiff in Suit No 766 of 2002 and the defendant in OS No 948 of 2002), was the founder, chairman and managing director of PEK in 1978 and until December 1996 was the controlling and majority shareholder of PEK, owning along with his brother, Chang Hong Kaye Jimmy, and another, Neo Kee Choon Thomas (collectively known as "the original shareholders"), 100% of the issued shares of PEK. He was the chairman, managing director and chief executive officer of PEK until 9 February 2002 when he was allegedly wrongfully removed from his said positions. He has been, since 20 December 1996, a minority shareholder of PEK, being the beneficial owner of some 76,800 shares in PEK (approximately 31% of the issued shares).

6 Chang Hong Kaye Jimmy ("Jimmy") (the second plaintiff in OS No 347 of 2002) is the brother of Ivan. He was employed by PEK as an executive director until 21 February 2003, when he was allegedly wrongfully removed from that position. He is also said to be the beneficial owner of and registered shareholder in respect of 19,400 shares in PEK, representing approximately 7.8% of the issued shares of PEK.

7 Publicis Worldwide BV (the fourth defendant in OS No 347 of 2002 and the fifth defendant in Suit No 766 of 2002 as well as Suit No 280 of 2003) is a company incorporated in the Netherlands having its place of business at Beethovenstraat 198, 1077 JZ Amsterdam, and is the registered owner of 148,000 shares, amounting to 60% shareholding in PEK.

8 Publicis Groupe SA (the fifth defendant in OS No 347 of 2002, Suit No 766 of 2002 and Suit No 280 of 2003) is a public-listed company incorporated in France and having its place of business at 133 Avenue des Champs-Élysées, 75008 Paris. It is said to be a world renowned advertising company and is the parent company of Publicis Worldwide BV.

9 Maurice Levy, Salomon Salto and Jean-Paul Morin (respectively the first, second and third defendants in OS No 347 of 2002) are directors of PEK, allegedly nominated by Publicis Worldwide BV and Publicis Groupe SA. (Earlier, these three persons were also defendants in Suits Nos 766 of 2002 and 280 of 2003, but actions against them in those suits were since either struck out or discontinued, following a court order. For the sake of completeness, it must also be mentioned presently that actions against Salomon Salto in OS No 347 of 2002, and against Michael George Stepan and Guillaume Levy-Lambert who were named as seventh and eighth defendants respectively in Suit No 280 of 2003, had since been discontinued). It was alleged that Maurice Levy was at all material times the chairman of the management board of Publicis Groupe SA. Salomon Salto was at all material times the senior vice-president of Publicis Worldwide BV. Jean-Paul Morin was at all material times the chairman and chief executive officer of Publicis Worldwide BV and the chief financial officer and corporate secretary of Publicis Groupe SA. Allegedly, Maurice Levy exercised control over the board of directors of PEK through his casting vote.

Synopses of the four actions

10 In so far as is material, a brief outline of the various actions between the parties is as follows.

(a) OS No 347 of 2002 revolves around a joint venture agreement entered into between Publicis Groupe SA and the original shareholders of PEK. The action herein is pursuant to s 216 of the Companies Act (Cap 50, 1994 Rev Ed). The two plaintiffs, Ivan and Jimmy, allege that the affairs of PEK as well as the powers of the directors have been conducted and exercised in a manner oppressive to the plaintiffs in disregard of the plaintiffs' interests as shareholders of PEK. The alleged oppressive acts include the termination of the employment of both plaintiffs from PEK and the diversion of business from PEK to elsewhere.

(b) In Suit No 766 of 2002, Ivan alleges that Publicis Worldwide BV and Publicis Groupe SA are in breach of their shareholders' agreement, call and put option agreement as well as the employment agreement. His action, in brief, against the defendants is for his reinstatement as the chief executive officer and managing director of PEK.

(c) In Suit No 280 of 2003, Jimmy alleges that his services as an employee of PEK have been wrongfully terminated by the defendants. His action is for reinstatement in PEK's employment.

(d) In OS No 948 of 2002, Publicis Groupe SA, relying on the share purchase agreement, shareholders' agreement and the call and put option agreement, seek an order for the transfer of 78,000 shares that Ivan currently holds in PEK. The plaintiff in the OS alleges that, consequent upon Ivan's termination of employment with PEK, he is obliged to effect the transfer of the said shares to the plaintiff.

Appeals and decision

11 Solicitors for Ivan and Jimmy, in the event, applied to the court for directions by way of Summonses in Chambers Nos 3280, 5210 and 5218 to 5220 of 2004, amongst other things, for consolidation of the four actions and, alternatively, for the said actions to be listed and tried one after the other before the same trial judge in the following sequence: (a) OS No 347 of 2002, (b) Suit No 766 of 2002, (c) Suit No 280 of 2003, and (d) OS No 948 of 2002. However, the assistant registrar who heard all the applications on 29 September 2004, whilst ordering that all four matters be heard by the same judge, disallowed the prayers for consolidation as well as the sequential order.

12 Appeals filed on behalf of Ivan and Jimmy in Registrar's Appeals Nos 277 to 280 of 2004 were heard by me first on 8 November 2004 with further arguments on 23 November 2004. After hearing arguments, I made the orders referred to in [2] above.

13 The directions contained in my orders, as stated therein, are provisional in nature. They were based on an overview formed by me on the subject matter of each actions and their significance. In my provisional opinion, OS No 347 of 2002, instituted pursuant to s 216 of the Companies Act, is the most significant one. A resolution of the issues raised in it should, by and large, dispose of the other actions which were sequenced behind it, since the said action, more or less, encompasses most of the issues raised in the other proceedings. The next two actions (Suits Nos 766 of 2002 and 280 of 2003), one by Ivan and the other by Jimmy, concern issues relating to the termination of their employment contract. The termination issue also features in OS No 347 of 2002. In my view, the remaining action, OS No 948 of 2002, by Publicis Groupe SA, is in fact predicated upon the findings in OS No 347 of 2002 and Suit No 766 of 2002. Having considered the great overlap and interlink amongst the four actions, I considered it to be fair and exercised my discretion to arrange the sequence of the hearings in the manner I have ordered, whilst ensuring that the discretion of the trial judge is not fettered in any way.

14 Further, my orders also made it clear that parties could apply to the Registrar (which term includes Deputy as well as Senior Assistant Registrar) who might be hearing further pre-trial matters, to alter the sequence of the hearing of the actions. In the circumstances, the purport of the appeals herein is somewhat puzzling. I would like to add that the judicial discretion which I have exercised in these matters is a liberty or privilege to decide and act in accordance with what is fair and equitable, under the peculiar circumstances of the particular case. In such an exercise, the court is guided by the principles of fairness and equity, and the exercise of such discretion is reviewable only in exceptional circumstances (see *Manekas v Allied Discount Co, Inc* 166 NYS 2d 366 (1957) at 369).

15 In my opinion, the sequence I have ordered and the order that evidence adduced in one action shall be admitted as evidence in the remaining actions, are fair in the context of the factual matrix of all four actions. It is against my said order, that this clutch of appeals is filed.