Tullett Prebon (Singapore) Ltd and Another v Chua Leong Chuan Simon and Others and Another Suit
[2005] SGHC 150

Case Number : Suit 498/2005, 515/2005, SIC 3507/2005, 3608/2005

Decision Date : 19 August 2005

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Vinodh S Coomaraswamy SC, Yip Weng and Elaine Wong (Shook Lin and Bok) for the plaintiffs; Suresh Damodara and Sunil S Gill (David Lim and Partners) for the defendants in S 498/2005; N K Rajarh (N K Rajarh) for the defendant in S 515/2005; Christopher Anand Daniel and Ginny Chew Jee Ling (Allen and Gledhill) for the intervener (BGC International (S) Branch)

Parties : Tullett Prebon (Singapore) Ltd; Tullett Liberty Pte Ltd — Chua Leong Chuan Simon; Chong Pheng Woon; Loh Chee Boon; Tan Lee Seng William

Employment Law – Contract of service – Breach – Whether interlocutory injunction should be granted to restrain employee from working for another employer

Injunctions – Purposes for grant – Protection of contractual rights – Whether adequacy of damages sole consideration

19 August 2005

Choo Han Teck J:

1 These two summonses were applications for interlocutory injunctions against the defendants. The first application was made under Suit No 498 of 2005 ("Suit 498/2005") against the four defendants who are employees of the first plaintiff. The second was made under Suit No 515 of 2005 ("Suit 515/2005") against the solitary defendant who is also the first plaintiff's employee. These two suits have not been consolidated and so the applications were made separately to be heard one after the other. However, the two suits share some common facts and background information. The legal and factual disputes are also identical (except for some differences in the contract terms of the defence in Suit 515/2005) and can all be dealt with at the same time. The arguments were presented before me as if the applications were consolidated. That seemed to be a sensible and convenient approach. The second plaintiff in Suit 498/2005 was the employer of the third defendant before the latter was seconded to the first plaintiff. Counsel for the plaintiffs, Mr V Coomaraswamy SC, informed me that the second plaintiff was therefore joined as a party in case the defendant raised the issue as to the identity of his employer. That issue, however, is not relevant for the purposes of the two interlocutory applications. Before hearing counsel, I heard an application by Mr Christopher Daniel on behalf of BGC International (Singapore branch) ("the intervener") to intervene in the two suits. I granted the application because it was said that the defendants were presently working for the intervener, and therefore an injunction against the defendants would affect the intervener, who would otherwise not be heard unless it was formally joined as a party to the proceedings. It is likely that it will also wish to be heard at the trial proper.

2 The first plaintiff in Suit 498/2005 and the plaintiff in Suit 515/2005 ("Tullett Prebon"), and the intervener, are rival companies in an "inter-dealer money broking" business. Tullett Prebon employed the defendants in Singapore. The contracts of employment, except that of the fourth defendant in Suit 498/2005, were similar in terms. The contracts provided the employee with a right to terminate the employment on three months' notice. However, the right to terminate accrued only after the employee had served two years' employment. These were the common terms. The annual

salary and date of commencement of contract were different in each case, but these differences are not relevant. In the case of the fourth defendant in Suit 498/2005, however, he had not yet served the requisite two years' employment and so was not contractually entitled to give notice of termination.

3 At various dates between 17 June 2005 and 14 July 2005, Tullet Prebon letters from the five defendants stating that they were resigning from the company. Tullet Prebon responded through its solicitors by putting the defendants on notice that although the defendants' conduct amounted to a breach of contract, it did not accept the breach. The plaintiffs consequently commenced these two suits against the defendants. The applications before me were for an order enjoining each of the defendants from working for the intervener. The applications came before me on 19 July 2005 and were adjourned to 10 August 2005 on the application of the defendants on the ground that they needed time to prepare a response. As at 19 July 2005, it was not known to the plaintiffs whether the defendants had in fact joined the intervener or any other company. The defendants' solicitors were unable to say that the defendants would provide an undertaking (which Mr Coomaraswamy had requested) that they would not seek employment elsewhere pending the hearing of these applications. On 10 August 2005, Mr Daniel appeared and applied on behalf of his client to intervene on the ground that the intervener had employed the defendants on 25 July 2005 and, therefore, it (the intervener) had an interest in the proceedings.

4 Mr Coomaraswamy conceded that although an employer could not compel a reluctant employee to continue working for him, he was entitled to restrain the employee from working for somebody else. I accept that proposition as established law. If, in breach of contract, a concert performer tells the concert promoter that he no longer intends to perform as scheduled because he will be performing at another concert hall, he may be restrained from performing at the second hall even though the court might not be able to compel him to perform his original contract. What is the underlying principle behind such a remedy in contract? Why, it might be asked, ought one to be mean-spirited and prevent the second performance when he cannot compel the performance of the first? It would, indeed, be a loss to those who would otherwise have enjoyed the second concert. The answer is simple. A legally binding agreement is binding and enforceable because the parties intended it to be so, and they believed, as would any bystander who might be asked, that it would be dishonourable not to do so. Under such circumstances, keeping one's word is a virtue that provides a very sound basis for the founding of any principle.

5 The defendants and the intervener opposed the application on a number of grounds. Firstly, it was said that it was not the defendants, but the plaintiffs, who were in breach of contract because they breached an implied term of the contract that, counsel submitted, established a requirement for mutual trust and confidence. Counsel for the defendants, Mr Suresh Damodara and Mr Rajarh, referred to the affidavits of their clients, but I could not reconcile the grievances expressed therein to support the contention that the plaintiffs were in breach of an implied term of mutual trust and confidence. For example, the third defendant in Suit 498/2005 deposed that he felt that he was working to support the high salaries paid to the expatriate staff. It was not explained why this assertion, if true, amounted to a breach of mutual trust and confidence. I also agree with Mr Coomaraswamy that the events that led to the two previous actions in Suits Nos 92 and 195 of 2005 are not relevant to the present action because those events had taken place (with the termination of the employment of one Mark Spring) almost ten months prior to the present purported resignations of the defendants. The trial judge, with a more complete state of the evidence, will be better placed to determine whether such a term (mutual trust and confidence) existed in the contracts in question, and if so, whether there was a breach of that term by the plaintiffs. Presently, there is insufficient evidence in support of the assertion that there was a constructive dismissal of the defendants. I am mindful that my present view was formed on untested evidence, and the trial judge might thus form a different opinion

at the end of the trial – such is the nature of interlocutory orders.

6 Secondly, it was contended that the law would not compel the performance of an employment contract, whether directly or indirectly. One of the authorities that Mr Daniel, counsel for the intervener, relied on was the decision in *Chiam Heng Hsien v Jurong Town Corp* [1984–1985] SLR 256 ("*Chiam Heng Hsien*"). The facts and issues there were not nearly as similar to that in the present case. An employee (as was the case in *Chiam Heng Hsien*) who insists that his employer continues to employ him is not in the same circumstances as an employer who insists that his employee not work for someone else until the contract of employment has been lawfully terminated. In *Chiam Heng Hsien*, the court held that the employer had wrongfully dismissed the plaintiff. However, the court was of the opinion that it served no purpose in reinstating the plaintiff since the employer could still terminate him by giving notice. In the circumstances, the court awarded the plaintiff three months' salary as damages instead.

7 I was asked to find that the balance of convenience lay against granting the plaintiffs' applications because its loss could be computed by monetary compensation. It is probably true that if the defendants were to be given no work when they were to serve out their notice period, then what the plaintiffs would lose would be the salaries of the defendants for three months. On the other hand, the damage the defendants could do by taking business away might not be easily or accurately ascertained. In my view, the convenience as well as the difficulties in assessing damages is roughly the same for all parties. Nothing that counsel has proposed has persuaded me that the defendants should be permitted to disregard the contract they had signed. The term in question was not an exceptional one, and if the same term is found in the contracts that the intervener has with its employees, I should think that the intervener would like to see that it is respected when an enticing offer from elsewhere comes the way of its employees. The principle of adherence to the contract is the most universal principle among all that counsel has paraded before me. The contractual loss in this case can have a value fixed on it, but honour is priceless. I lean in favour of honour. The general expectation that a man will abide by his agreement in a contract is another reason why the defendants here should be enjoined.

8 Ought I to consider the fact that the defendants have actually started work with the intervener as a point in their favour? I do not think so. They must know, certainly by 19 July 2005 when their counsel appeared in court to respond to these applications, that the plaintiffs had placed the defendants' right to seek other employment for the time being directly in issue. The defendants would therefore have joined the intervener's employ after that date with the knowledge that the plaintiffs might succeed in their application. I would consider their *fait accompli* a neutral factor at best. Finally, I refer to the point that counsel for the defendants and intervener have made concerning the court's refusal to grant the plaintiffs the same relief in the two other suits, namely, Suits Nos 92 and 195 of 2005. The nature of interlocutory relief is discretionary and the application of the principles to the facts may differ from court to court. Naturally, consistency is important, but the facts are not entirely identical.

9 This is not a dispute over a restraint of trade contract although it has the semblance of such a contract. It is really a case about the enforcement of a straightforward term as to when the employee in question should be permitted to tender his resignation. In this regard, Lord Reid's comments in *Esso Petroleum Co Ltd v Harper's Garage (Stourport) Ltd* [1968] AC 269 at 294 are directly on point:

> Whenever a man agrees to do something over a period he thereby puts it wholly or partly out of his power to "exercise any trade or business he pleases" during that period. He may enter into a contract of service or may agree to give his exclusive services to another: then during the period

of the contract he is not entitled to engage in other business activities. But no one has ever suggested that such contracts are in restraint of trade except in very unusual circumstances, such as those in *Young v Timmins* (1831) 1 Cr. & J. 331, where the servant had agreed not to work for anyone else but might have been given no work and received no remuneration for considerable periods and thus have been deprived of a livelihood: the grounds of judgment may not now be correct but I think that the case was rightly decided.

There was no argument that the contractual clauses in question in this case offended public policy in any way. In cases such as the present, where an injunctive relief is still possible, it should be granted unless there are good reasons why it should not, and I have not been persuaded that there is any good reason in refusing the plaintiffs' application. Ultimately, as Dillon LJ said in *Provident Financial Group plc v Hayward* [1989] 3 All ER 298 at 305, all the factors that counsel had raised there were matters of discretion, not principle. The matters and arguments raised before me were similar, that is, the balancing of prejudice and the convenience of damages. So, as a matter of discretion, I would rule in favour of the plaintiffs, with the additional comfort that in the present case, the law of contract appears *prima facie* to be in their favour as well. For these reasons, I think that, contrary to the submissions of counsel for the defendants and the intervener, the plaintiffs do have a legitimate interest to protect – their interest in the contract of employment. Not every breach should be answered with a "damages are adequate" retort. In many commercial contracts, damages would usually be a sufficient remedy, and in many instances, the most appropriate one. It is also a remedy that might be combined with other remedies to refine the orders that a court might make so as to present the fairest possible result. It should not be the default remedy of convenience. When a term of contract is clearly expressed, it should be enforced wherever possible so that the parties to the contract, and the people who help draft them, might not despair to know that their efforts would ultimately be futile because no one cares, and that the courts would only order damages.

10 For the reasons above, the plaintiffs' applications are allowed. However, the period of three months shall commence from 19 July 2005. The period of purported employment by the intervener from 25 July 2005 to date will be subject to the calculation of damages, if any, after trial. The nature of the present disputes indicates that, like Suits Nos 92 and 195 of 2005 before them, these two actions ought also to be consolidated, and be heard immediately after the two antecedent actions with liberty to apply to the trial judge. Costs shall be costs in the cause.

11 Counsel for the intervener asked for leave to present further arguments. His letter of 18 August 2005 referred to matters which I had already taken into account, and perhaps the only point that required clarification was that even if the law absolutely prohibited the enforcement of a contract by giving effect to a negative covenant in the agreement, the circumstances here do not justify classifying it as such a case.

12 Likewise, counsel for the defendant in Suit 498/2005, Mr Damadaraj, wrote to present further arguments. The only matter I need to address is the purported reliance by Lai Kew Chai J on *Cantor Fitzgerald v Wallace* [1992] IRLR 215. First, Lai J's decision was entirely a matter of his discretion. If he had likened the trade connections in this case to that in *Cantor Fitzgerald v Wallace*, then I need only point to counsel my grounds above in which I see other matters that I considered to be legitimate interests.

13 I, therefore, did not require further arguments to be presented.