

Beckett Pte Ltd v Deutsche Bank AG and Another
[2006] SGHC 26

Case Number : Suit 326/2004, RA 321/2005
Decision Date : 14 February 2006
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Ronald Choo (Rajah and Tann) for the plaintiff; Andrew Chan and Loong Tse Chuan (Allen and Gledhill) for the first defendant
Parties : Beckett Pte Ltd — Deutsche Bank AG; PT Dianlia Sety Amukti
Civil Procedure – Discovery of documents – Whether information relevant to issue at hand – Whether order for discovery correct

14 February 2006

Kan Ting Chiu J:

1 This is another step in the protracted action between the plaintiff, Beckett Pte Ltd (“the Company”), and the first defendant, Deutsche Bank AG (“the Bank”). It arises from discoveries that the Bank was ordered by an assistant registrar on 25 October 2005 to give.

2 In the appeal before me, counsel for the Bank defined the scope of the appeal by stating that:

The *sole issue* in the present appeal is whether the Court should vary an earlier direction given by the Assistant Registrar in SIC 4601/2005/X ... granting the Plaintiff discovery of documents in relation to the value of certain pledged shares in 2005, in view of a subsequent decision by the Senior Assistant Registrar in SIC 5762/2005 ... who bifurcated the trial and held that damages in the present action, if any, will be assessed only after the question of liability has first been decided. [emphasis added]

3 The order the assistant registrar made related to the source material to a document referred to as “Project Newcastle” that was prepared by the Bank.

4 In her written grounds, Assistant Registrar Gillian Koh Tan stated at [16]:

Turning first to the issue of relevance, I am of the view that the Newcastle source material is highly relevant to the present action. It is clear from the plaintiff’s Amended Statement of Claim that it claims, as an alternative to the equity of redemption in respect of the pledged shares, an award of damages based on the value of the shares, and the plaintiff is entitled to argue that this value should be pegged at the present. The Newcastle source information may well shed some light on the current valuation of the shares; this would assist the trial court in disposing fairly of the matter.

5 After the order was made, Senior Assistant Registrar Kwek Mean Luck made another order on 14 November 2005 that the Company’s claim for damages be tried after the determination of the issue of liability.

6 The Bank’s argument before me was that with the bifurcation of the trial into the two issues,

only material relevant to the issue of the Bank's liability was relevant to the first stage of the hearing on liability.

7 The relationship and the dispute between the parties can be described simply. The Bank made a loan to a company, PT Asminco Bara Utama ("Asminco"). As part of the security for the loan, the Company pledged its shares in two companies, namely PT Adaro Indonesia ("Adaro") and PT Indonesia Bulk Terminal ("IBT") to the Bank. When Asminco defaulted on the repayment of the loan, the Bank sold the Company's pledged shares. The Company is suing the Bank for selling the shares at an undervalue.

8 The assistant registrar ordered the discovery of the supporting material to an Information Summary known as "Project Newcastle" which was prepared by the Bank to test market reaction of potential buyers of the Adaro and IBT shares. The Information Summary identified three sources of information:

- (a) Noonday Asset Management Asia Pte Ltd;
- (b) Everitt Investments (Private) Limited; and
- (c) other "co-investors".

9 The Bank relied on the assistant registrar's reasoning that as the Company is seeking damages as an alternative remedy to the redemption of the shares, the Project Newcastle source material may shed light on the valuation of the shares.

10 The Bank's argument is that when it was ordered that liability was to be dealt with first, information on the valuation of the shares is not relevant to the issue of liability, and should not be discovered until and if the action progresses to the stage when damages are to be assessed.

11 The assistant registrar's reasoning was perfectly logical when she made her order. The Bank accepts the reasoning when it relied solely on the bifurcation in the appeal. However, the Bank's argument proceeds on the proposition that what was highly relevant to the issue of damages when the Assistant Registrar made her order is not relevant to the issue of liability.

12 Is that justified? I think not. There is no reason that dictates that the valuation information is relevant either to liability, or to damages. It may well be relevant to both the issues. The source information was the basis on which the Information Summary was prepared, which put a valuation on the shares. The Bank must exercise due care when it executes its right to sell the pledged shares, and that extends to the preparation of the Information Summary from the source information. If it failed to give proper consideration to the source information in arriving at its valuation, it would have failed to act with diligence in selling the pledged shares. The source information is relevant to show whether the Bank had acted reasonably in arriving at the valuation it did.

13 The assistant registrar did not refer to this in her grounds because the information was obviously relevant to the issue of damages. But this omission does not render her order wrong, and I found that the order was correct because the information is also relevant to the issue of liability, and I dismissed the appeal.

14 The Bank now appeals against my decision.