Tullett Prebon (Singapore) Ltd and Others v Spring Mark Geoffrey and Another [2007] SGHC 71

Case Number : Suit 855/2006, RA 101/2007

Decision Date : 17 May 2007

Tribunal/Court : High Court

Coram : Andrew Ang J

Counsel Name(s) : Vinodh S Coomaraswamy SC, Rajiv Nair and Felix Lee (Shook Lin & Bok) for the plaintiffs; Muthu Arusu, Dinesh Dhillon and Melanie Chng (Allen & Gledhill) for the defendants; Daryl Mok (Drew & Napier LLC) for non-party

Parties : Tullett Prebon (Singapore) Ltd; Tullett Liberty Pte Ltd; Prebon Yamane Financial Services (Singapore) Pte Ltd — Spring Mark Geoffrey; BGC International (Singapore Branch)

Civil Procedure – Interrogatories – Application for leave – Parties signing settlement agreement containing confidentiality clause – Terms of agreement leaked to media – Both parties seeking interrogatories against media companies and/or journalists – One party given leave to serve interrogatories on media – Whether other party should also be given leave

Constitutional Law – Fundamental liberties – Freedom of speech – Interrogatories sought against journalist to expose identity of source – Whether "newspaper rule" existing in Singapore

17 May 2007

Andrew Ang J

1 This was an appeal by the plaintiffs against the decision of the assistant registrar ("the AR") in Summons No 358 of 2007 in which she dismissed the plaintiffs' application for leave to serve interrogatories against a non-party, Ms Mia Shanley ("Shanley"), a reporter with Reuters Singapore Pte Ltd ("Reuters") in respect of a news report ("the Report") published on the Reuters' news service at about 8.03pm on 24 November 2006. Before going any further, it would be pertinent to set the context in which the plaintiffs' application for leave to serve interrogatories arose.

2 By an agreement ("the Settlement Agreement") on 23 November 2006, the plaintiffs agreed with the defendants, amongst others, to a settlement on a "without prejudice" basis of Suit Nos 92, 195, 498, 515 and 634 of 2005 (all consolidated pursuant to an Order of Court dated 6 January 2006) ("the Consolidated Actions"). The Settlement Agreement provided, *inter alia*, for a settlement sum to be paid by BGC International (Singapore Branch) ("BGC") to the plaintiffs and for all parties to keep the terms of the Settlement Agreement confidential.

3 News reports appeared in several media publications, including the Reuters news service on 24 November 2006 and in The Straits Times and Business Times on 25 November 2006, in which statements were made concerning the quantum of the settlement sum agreed to be paid.

4 As BGC failed to pay the settlement sum despite repeated reminders, the plaintiffs brought an action against BGC for payment of the same together with interest and costs. The plaintiffs also sought damages against the defendants for breach of the confidentiality obligation under the Settlement Agreement.

5 In their defence, BGC alleged that the plaintiffs had breached the said confidentiality obligation

under the Settlement Agreement and that in the premises, BGC was discharged of any obligation to pay the settlement sum. In the alternative, it averred, *inter alia*, that BGC was entitled to a diminution of all sums payable on account of damages to which it was entitled, on account of the plaintiffs' breach of confidentiality.

6 Both the plaintiffs and the defendants sought leave of court for interrogatories to be served on non-parties, in the case of the plaintiffs on Shanley (of Reuters) and in the case of the defendants on The Straits Times and Business Times. After having unsuccessfully resisted the defendants' application to court, the journalists concerned, *viz*, Arthur Poon Wai Keong (of The Straits Times) and Wee Li-En (of Business Time s) have since disclosed their source, *viz*, Huntington Communications Pte Ltd ("Huntington"), a public relations agency. The defendants then followed up with a further application for leave to serve interrogatories on Huntington.

7 The assistant registrar hearing the defendants' application against Huntington allowed the same while a different assistant registrar hearing the plaintiffs' application against Shanley dismissed the same.

8 The plaintiffs appealed against both decisions. I dismissed their appeal in RA No 102 of 2007 against Huntington being required to answer the interrogatories and Huntington has since responded to the interrogatories. Consistently therewith, I allowed the plaintiffs' appeal in RA 101 of 2007 (the instant appeal) from which decision Shanley has appealed.

9 The two statements in the Report which are the subject of the plaintiffs' application are as follows:

> BGC said that the month-long court case ended with it agreeing to pay the same amount it had initially offered months before the trial started.
>
> A source told Reuters that the initial offer was around a fifth of the S$66.4 million requested.

10 In the appeal before me, the plaintiffs were no longer pursuing their application for interrogatories to be served in respect of the first statement, as Shanley had meanwhile confirmed that the source for the first statement was an official press statement sent out by one Eunice Lua of August Consulting on behalf of BGC on 24 November 2006.

11 In the appeal, the plaintiffs sought only to compel the said Shanley to reveal the following about the second statement:

> (a) The identity of the "source" referred to in the second statement; and
>
> (b) The date and time when the source told Reuters that the initial offer was around a fifth of the S$66.4m requested.

12 Mr Daryl Mok ("Mr Mok"), counsel for Shanley, argued that the interrogatories sought were not relevant. Firstly, it was argued that the plaintiffs had not shown how the second statement evinced a clear breach of the confidentiality agreement between the plaintiffs and defendants. Mr Mok argued that the second statement related to the quantum of the *initial offer* and *not the settlement sum*. Clearly, that argument was unmeritorious. The second statement supplied what was left unsaid in the first statement thereby informing any reader that the quantum of the settlement sum was about one-fifth of S$66.4m.

13 Mr Mok next argued that information as to the quantum of the initial offer *could have been* in the public domain even before the settlement agreement was entered into. That was pure speculation unsupported by any evidence. The fact that Shanley attributed it to an anonymous source clearly suggested that it was not obtained in the public domain. Why would Shanley have agreed to preserve confidentiality, as she alleged, if the information was in the public domain? If indeed it was, Shanley could easily have said so in her first affidavit which was filed to resist the application.

14 Yet another argument raised by Mr Mok was that the plaintiffs had not demonstrated that the second statement emanated from the defendants or persons acting on their behalf. I found the argument quite baffling. Surely that is precisely the object of the interrogatories. If the plaintiffs were already able to show that the second statement emanated from the defendants, they would not have applied to court for leave to administer interrogatories!

15 Next, Mr Mok submitted that the second statement was not relevant to the real or main issue at trial. His reasoning set out in paras 24–26 of his written submissions was as follows:

> 24. Even if the second statement is relevant to the issue of whether the defendants have breached the confidentiality obligation (which is denied), it is submitted that it is completely irrelevant to the real or main issue at the trial of this action.
>
> 25. The real or main issue in this action is whether the defendants are obliged to make payment of the settlement sum under the settlement agreement. The defendants' Defence to this claim is that the plaintiffs are in fundamental breach of the confidentiality obligation, which breach discharges the defendants from further performance under the settlement agreement.
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> 26. The main issue at trial thus depends on whether the *plaintiffs*, not the defendants, are in breach of the confidentiality obligation. Therefore, even if it can be shown that the second statement in the Report evinces a breach on the part of the defendants of the confidentiality obligation, this is completely irrelevant to the main issue at trial.

To my mind, the main question, perhaps even more basic than the question whether the plaintiffs breached the confidentiality obligation, is whether that obligation was of such paramount importance that the plaintiffs' breach of the same would release the defendants from having to pay the settlement sum. In this context, if the defendants themselves had breached the confidentiality obligation even earlier than the plaintiffs, it would be open to the plaintiffs to contend that it does not lie in the mouth of the defendants to assert that the confidentiality obligation was of fundamental importance. The interrogatories were therefore relevant.

16 In support of his contention, Mr Mok cited *Chitty on Contracts* (29th Ed, 2004, Sweet & Maxwell) at para 24-015 which reads as follows:

> **Both parties in breach**. Where both parties are alleged to have committed a breach of contract, *and it is asserted that each breach* (taken independently) *gives rise to a right to terminate further performance* of the contract, regard must be had to the order in which the breaches occurred. Where one party (A) breaches the contract and that breach is followed by a breach by the other party (B) then, *assuming that both breaches are repudiatory*, the breach by party A will give party B the right to terminate future performance of the contract. If B exercises that right and accepts the repudiation his subsequent failure to perform his obligations under the contract will not constitute a breach of contract. The position is rather more complex if B does not accept the breach and then himself commits a repudiatory breach of contract. In such a case can A accept the breach and terminate performance of the contract or does the fact that

> he has previously repudiated the contract prevent him from exercising his option to terminate? It is suggested that, in such a case, the effect of B electing to affirm the contract is to leave the primary obligations of both parties unchanged. The contract therefore remains in existence for the benefit of A as well as for B so that A should be free to elect to terminate performance.
>
> [emphasis added]

It will be noted from that passage that the situation therein under discussion is one where both breaches are repudiatory, *ie*, that the breach by each party gives the other party the right to terminate future performance of the contract.

17 The passage therefore underscores the importance of the question whether or not the confidentiality obligation was of such fundamental importance that a breach of the same would be repudiatory in nature. The case cited by Mr Mok in para 30 of his written submissions, *viz*, *State Trading Corporation of India Ltd v M Golodetz Ltd* [1989] 2 Lloyd's Rep 277 likewise presupposes that the breach in question is repudiatory in nature. The quote from Kerr LJ's judgment is as follows (at 286):

> *If A is entitled to treat B as having wrongfully repudiated the contract between them and does so*, then it does not avail B to point to A's past breaches of contract, whatever their nature. A breach by A would only assist B if it was still continuing when A purported to treat B as having repudiated the contract *and* if the effect of A's subsisting breach was such as to preclude A from claiming that B had committed a repudiatory breach. In other words, B would have to show that A, being in breach of an obligation in the nature of a condition precedent, was therefore not entitled to reply on B's breach as a repudiation.
>
> [emphasis added]

18 Under a separate heading in his written submissions, Mr Mok submitted that the interrogatories were not necessary as the plaintiffs had not been hampered in their pleadings. For the reasons I have already given as to the relevance of the interrogatories, I considered Mr Mok's objection to be unmeritorious.

19 In my view, his further contention that the plaintiffs had not attempted to obtain answers to their interrogatories from other sources is, likewise, without merit. It seems to me to be totally unrealistic to expect that the plaintiffs would be able to discover an answer from another source when the passing of the information was between an unnamed source and the journalist. It seemed unreasonable to me to require the plaintiffs to embark upon an exercise akin to searching for a needle in the haystack. Besides, there is a need for the court to be even handed and to be seen to be so. Both The Straits Times journalist, Arthur Poon Wai Keong, and the Business Times journalist, Wee Li-En, were compelled to answer interrogatories served on them by the defendants. I had also dismissed the plaintiffs' appeal against an order of the assistant registrar granting leave to the defendants to serve interrogatories on Huntington in regard to a statement which the defendants endeavoured to trace to the plaintiffs.

20 It is axiomatic that like cases should be treated alike. Mr Mok attempted to distinguish his clients' case from those of the Business Times and The Straits Times' reporters by saying that the plaintiffs had not brought Reuters in as a party. His contention was that his client Shanley should not be put between a rock and a hard place, *ie*, being compelled by a court to answer the interrogatories but prohibited by her employer from doing so.

21 I do not think Shanley can put up any possible objections by her employer as an excuse from having to disclose her source any more than she can plead her fear of breach of an undertaking of confidentiality between herself and her source as the justification for her refusal. There is no "newspaper rule" in Singapore.

22 This is not to say that the court does not have regard to the desirability of preserving confidentiality. Indeed, as Choo Han Teck JC (as he then was) said in *KWL Holdings Ltd v Singapore Press Holdings Ltd* [2002] 4 SLR 417 at [10]:

> What is spoken in confidence ought to be kept in confidence. Confidentiality must, therefore, be observed unless the greater interests of justice demand otherwise.

However, for the reasons stated above, I was satisfied that, given the relevance and need for answers to the plaintiffs' questions as to the source of the second statement and in order to be even-handed, the plaintiffs' appeal had to be allowed.

23 I therefore allowed the appeal with no order as to costs.