Ting Kang Chung John v Teo Hee Lai Building Construction Pte Ltd and Others [2008] SGHC 54

Case Number : OS 1807/2006, RA 16/2008, 17/2008

Decision Date : 10 April 2008

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Ng Yuen (Ng & Koh) for the plaintiff; Second defendant in person; G Raman (G R Law Corporation) for the third defendant

Parties : Ting Kang Chung John — Teo Hee Lai Building Construction Pte Ltd; Anwar Siraj; Khoo Cheng Neo Norma

Civil Procedure – Discovery of documents – Application – Repeated applications for discovery – Example of litigant severely hampering the adjudication of merits of case by incessantly taking out interlocutory applications and appealing all the way each time

10 April 2008

Tay Yong Kwang J:

1 The plaintiff is an architect. He was appointed by the President of the Singapore Institute of Architects to be the arbitrator in the dispute between Teo Hee Lai Building Construction Pte Ltd (the first defendant) on one side and Anwar Siraj and Norma Khoo Cheng Neo (the second defendant and the third defendant respectively) on the other side. The second defendant is the husband of the third defendant. The matters in issue here do not concern the first defendant.

2 This originating summons was commenced on 21 September 2006 by the plaintiff seeking an order that he be given an extension of time to 15 April 2005 to issue the arbitral award and that the defendants jointly and severally pay him $199,178.40 being the fee due to him as arbitrator.

3 In October 2006, the second defendant applied for discovery of the documents referred to in the plaintiff's affidavit supporting his originating summons. The plaintiff objected to the production of some documents, including the arbitral award dated 15 April 2005. The second defendant failed in his application for discovery and appealed to a judge on 14 November 2006. His appeal was unsuccessful.

4 In December 2006, the second defendant took out an application to strike out the plaintiff's action. He failed before an assistant registrar. His appeal to a judge also failed. In the meantime, he issued a notice to the plaintiff to produce 106 items of correspondence referred to in the plaintiff's said supporting affidavit. The second defendant was allowed to inspect the documents in question.

5 In May 2007, the second and third defendants were ordered to file their affidavits in respect of the merits of the case by June 2007, with the plaintiff filing his affidavit in response 14 days thereafter. The said defendants filed their affidavits by 10 July 2007. The plaintiff's affidavit was therefore due on 24 July 2007. However, on 12 July 2007, the second defendant issued another notice to the plaintiff to produce 121 documents referred to in the plaintiff's said supporting affidavit. During the discovery process, a dispute between the parties arose and the second and third defendants missed the deadline in October 2007 for filing of further affidavits.

6 On 1 November 2007, the second defendant applied for further discovery of documents. This

application was to be heard together with the hearing of the originating summons on 14 November 2007. The plaintiff wanted the first prayer of his originating summons (for extension of time to issue the arbitral award) heard first so that the second and third defendants would have to elect thereafter whether or not to apply to court to tax the plaintiff's fee for the arbitration. However, the second and third defendants argued against hearing the said first prayer of the originating summons that day. As a result of this, the plaintiff was convinced that they would not apply for taxation of his arbitration fee should the court allow the extension of time sought. As the said defendants would consequently be bound by the plaintiff's findings on the arbitration fee, the plaintiff filed another affidavit on 22 November 2007 to exhibit the parts of the arbitral award (pages 1, 2 and 6) which deal with his findings on the issue of the arbitration fee.

7 On 12 December 2007, an assistant registrar ordered discovery of 8 out of the 121 documents (see [5] above). Of these 8 documents, the plaintiff stated that four were not even in the second defendant's request for discovery, one had already been given to the second defendant, one was already exhibited by the third defendant in her affidavit in July 2007 while the last two were correspondence which had already been inspected by the second defendant earlier. The assistant registrar also ordered that any further interlocutory application by the second and third defendants would have to be filed by 17 December 2007. She further ordered the said defendants to file their final affidavits on the merits by 21 December 2007. The hearing of the originating summons was then adjourned to be heard on 28 December 2007. Subsequently, the hearing date was apparently brought forward by the registry to 24 December 2007 but later rescheduled for 3 January 2008 and then to 6 February 2008. The second defendant appealed to a judge against the assistant registrar's order of 12 December 2007.

8 On 14 December 2007, the second defendant issued yet another notice to the plaintiff to produce further documents. In this notice, he sought discovery of two sets of documents ("set A" and "set B"). Set A comprised another seven correspondence referred to in the plaintiff's supporting affidavit filed in September 2006. Although the plaintiff was of the view that the second defendant was not entitled to issue multiple notices for discovery in the way that he had done, in order to expedite matters, the plaintiff immediately offered the said correspondence for inspection when the second defendant went to the plaintiff's solicitors' office on 14 December 2007. However, the second defendant declined the offer. Set B was for production of another three pages (pages 3, 4 and 5) of the arbitral award.

9 To avert further delay to the hearing of the originating summons, the plaintiff sent a copy of the said correspondence and of pages 3, 4 and 5 of the arbitral award to the second defendant on 17 December 2007. Despite that, the second defendant filed summons no. 5581 of 2007 on 18 December 2007, one day after the deadline for interlocutory applications directed by the assistant registrar (see [7] above). On 21 December 2007, the second defendant filed summons no. 5635 of 2007 asking for stay of execution of the assistant registrar's order of 12 December 2007 and stay of proceedings in the originating summons pending the outcome of his appeal against the assistant registrar's decision (which was to be heard by a judge on 17 January 2008). These summonses were heard together by an assistant registrar on 4 January 2008.

10 In respect of summons no. 5581 of 2007, the assistant registrar held:

> I accept [the second defendant's] point that the presentation by [the plaintiff's solicitors' firm] of the documents in question was not very clear, and this could have necessitated the fourth notice to produce. Nevertheless, the documents sought for has now already been provided by the plaintiff. [Plaintiff's counsel] has also already made clear in their letter earlier that all the documents in question have been produced at the inspection. I will therefore make no order on

this application.

On the issue of costs, I take into account the fact that [plaintiff's counsel's] approach of producing the documents sought for and yet at the same time serving a notice to object to the inspection may appear contradictory, especially to [the second defendant] a layman acting in person. In the circumstances, one may understand why [the second defendant] had deemed it necessary to take up this application. But the fact remains that [the second defendant] had not successfully obtained any of the prayers that he seeks before me. For these reasons, I make no order as to costs.

11 In respect of summons no. 5635 of 2007, the assistant registrar held that there was no need for the orders sought as the hearing for the originating summons had already been adjourned. He also saw no basis to order a stay of the order of 12 December 2007 and no basis to extend time for filing of further affidavits. He therefore dismissed the second defendant's application and ordered costs fixed at $600 to be paid by the second defendant to the plaintiff. He added that the proceedings in the originating summons should not be protracted any further and ordered all further interlocutory applications and notices to produce documents be made by 18 January 2008.

12 On 16 January 2008, the second defendant filed two notices of appeal against both orders in [10] and [11] above. Essentially, he wanted the said orders of the assistant registrar set aside and wanted orders in terms of his two applications to be granted. These appeals were heard by me.

13 I will dispose quickly of the matters in summons no. 5635 of 2007 first. The appeal against the order of 12 December 2007 was heard and dismissed by Woo Bih Li J on 17 January 2008. The second defendant informed me that he would be appealing against Woo J's decision. By the time the appeals in the two summonses came before me on 4 February 2008, it was clear that this application had become academic. The hearing of the originating summons had already been postponed and the order in question (the 12 December 2007 order) had already been considered on appeal. Nevertheless, the second defendant persisted in trying to draw subtle and irrelevant distinctions. He argued before me that the hearing of this summons before the assistant registrar focused on the tight timelines ordered on 12 December 2007 while the hearing before Woo J concentrated on the striking out of the originating summons on the ground of contempt of court. In my view, the second defendant was merely going over matters which had or should have already been canvassed earlier.

14 Where summons no. 5581 of 2007 is concerned, the overriding principle in discovery is that it must be necessary either for disposing fairly of the cause of matter or for saving costs (see O 24 rr 7 and 13 of the Rules of Court, Cap 322 R 5, 2006 Ed). In the light of the events that had taken place, it was disingenuous of the second defendant to keep asking for documents, particularly when he had been given the opportunity to inspect them and indeed had been given copies thereof. Further, the correspondence in issue was set out by the plaintiff merely to show the amount of work put in for the arbitration proceedings and the issues involved therein.

15 The matters relied on by the plaintiff in his application for extension of time were set out in his supporting affidavit and not in the arbitral award. The plaintiff has a lien on the arbitral award. The second defendant had attempted to obtain discovery of the said award in 2006 but that was refused by the court. The three pages in issue requested by him had already been given to him.

16 The second defendant is like a boxer who keeps asking for better gloves and better shoes and, having been given those, yet absolutely refuses to get into the ring to fight. I do not think he was genuinely confused by the plaintiff's solicitors' production of the documents coupled with a notice of objection to his purported right to keep asking for documents. I see nothing inherently contradictory

in the plaintiff taking such a stance in order to move things forward while the second defendant persisted in his attempts at jamming the machinery of litigation.

17 In the circumstances of the case, both appeals were dismissed with costs fixed at $1,200 to be paid by the second defendant to the plaintiff. The second defendant has now appealed to the Court of Appeal against my decision. The third defendant, wife of the second defendant, is legally represented and was served the applications by the second defendant. Her counsel merely associated himself with the second defendant's submissions and did not wish to ask for costs.

18 This case highlights the concerns expressed by some in the legal profession on the need to restrict the right of appeal to the Court of Appeal in interlocutory matters of this nature. It demonstrates how a litigant can severely hamper the adjudication of the merits of a case by incessantly taking out interlocutory applications and appealing all the way each time, so long as he has the funds and the energy to do so. It would be useful to study how the Supreme Court of Judicature Act (Cap 322), in particular, s 34 thereof, could be modified to curb such excesses.