Holdrich Investment Ltd v Siemens AG
[2009] SGHC 284

Case Number : Suit 679/2008, RA 176/2009

Decision Date : 21 December 2009

Tribunal/Court : High Court

Coram : Lee Seiu Kin J

Counsel Name(s) : N Sreenivasan and Collin Choo (Straits Law Practice LLC) for the plaintiff; Gregory Vijayendran and Sung Jingyin (Rajah & Tann LLP) for the defendant

Parties : Holdrich Investment Ltd — Siemens AG

Conflict of Laws – Natural forum

21 December 2009

Lee Seiu Kin J:

1 On 23 September 2008, the plaintiff filed the writ of summons in this action. The plaintiff then obtained leave on 11 November 2008 to serve the writ of summons on the defendant outside the jurisdiction pursuant to O 11 r 1(d)(iii) of the Rules of Court (Cap 322, R5, 2007 Rev Ed) ("Leave Order"). However on 4 May 2009, in summons no 1100 of 2009, the defendant obtained an order discharging the Leave Order. The plaintiff appealed before me against the decision of 4 May 2009.

2 The appeal turned on whether Singapore is *forum non conveniens*, because if it is, then the appeal should be dismissed, and *vice versa*. After hearing counsel's submissions on 17 July 2009, I held that Singapore was clearly the more appropriate forum and allowed the appeal. I set aside the order of 4 May 2009 which discharged the order granting leave to serve the writ outside jurisdiction and reinstated the Leave Order. The defendant has since appealed against my decision and I now give the grounds for my decision.

3 The plaintiff is a Hong Kong company and the defendant a German company. They entered into a contract entitled "Service Agreement" under which the plaintiff undertook to render what is best described as "consultancy services" in respect of a project known as the "UMTS Project". This Service Agreement was subsequently amended by common consent. I shall refer to the amended agreement as "the Contract". Under the Contract, the plaintiff was to receive a commission fee equivalent to 2% of the value of the supply contract for the UMTS Project upon its award to Siemens Information and Communication Networks S.p.A., an Italian company related to the defendant. The Contract provides that it shall be governed by Singapore law. Apart from that provision, there appears to be no other connection to Singapore.

4 The plaintiff's claim is for the sum of US$2.33m, being the sum payable under the Contract in respect of the "consultancy services" provided to procure UMTS projects in India and Indonesia. The defendant denied liability and took the position that Germany is the more appropriate forum to hear the dispute, essentially because the persons who negotiated and executed the Contract on its behalf, and who will be called as its witnesses, are no longer in its employ and are located in Germany. These witnesses are important for a possible defence based on implied terms of the Contract. Another defence is that of lack of authority and the witnesses for this are also ex-employees located in Germany. Finally, the defendant stated that it is the subject of an investigation by the German prosecution authorities which had seized documents relating to the matter.

5 The plaintiff's position is that the Contract is in writing and oral evidence pertaining to the negotiation is not an important factor. Also the evidence supporting the plaintiff's claim is based on letters and other written communication. The investigation in Germany against the defendant is its own doing and even if it is true that the defendant has problem with access to its documents, this should not be a factor in its favour.

6 I was of the view that, as the main issues in the suit pertain to questions of law, Singapore would be the more appropriate forum as the governing law is Singapore law. To hold the trial in Germany would mean having the German court take expert evidence on Singapore law, in which case there would be problems of translation from the English to the German language. Furthermore a civil law jurisdiction would be called upon to decide questions of law from a common law jurisdiction. To hold the trial in Singapore would mean dispensing with the question of expert evidence and translation of the law and legal concepts and having an authoritative determination of the issues of law. The parties had agreed on Singapore law as the governing law and this is an important consideration even though there is no other connection to Singapore. There are many instances today where parties from different countries have decided on Singapore law as a neutral choice and due regard must be given to this factor, as was done in *Rickshaw Investments Ltd v Nicolai Baron von Uexkull* [2007] 1 SLR 377. I agreed with the plaintiff that the dispute involves mainly documents that are available to both sides and so the issue of the availability of the defendant's witnesses did not carry the sort of weight that the defendant asserted. It should be noted that the claim pertains to transactions carried out, not in Germany, but in India and Indonesia. As for documentation, I was not persuaded that the German authorities would not be willing to release copies for the purposes of the defendant's defence. In any event, I agreed with the plaintiff that the fact that the defendant is under investigation should not be given undue weight in considering the appropriate forum. In my view, the circumstances of the case favoured Singapore as the more appropriate forum for this action. For these reasons, I set aside the order of 4 May 2009 and reinstated the Leave Order.

7 On the question of costs, the plaintiff conceded that there was material non-disclosure in the application for the Leave Order. I therefore did not disturb the order for costs against the plaintiff made on 4 May 2009. As for costs of the appeal, I ordered that half of the costs, fixed at $5,000 be paid by the plaintiff to the defendant with the other $5,000 to be in the cause.