IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 265

HC/Originating Summons No 786 of 2016
HC/Summons No 5188 of 2016

In the matter of DC Suit No 3051 of 2013, between Werner Samuel Vuillemin (Swiss Passport No X3211711) and Oversea-Chinese Banking Corporation

And

In the Matter of Order 55C of the Rules of Court

Between

Werner Samuel Vuillemin

… *Plaintiff*

And

Oversea-Chinese Banking Corporation Limited

… *Defendant*

GROUNDS OF DECISION

[Civil Procedure]–[Appeals]

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Werner Samuel Vuillemin
v
Oversea-Chinese Banking Corp Ltd

[2016] SGHC 265

High Court — HC/Originating Summons No 786 of 2016
(HC/Summons No 5188 of 2016)
Woo Bih Li J
18 October; 16 November 2016

30 November 2016

Woo Bih Li J:

Introduction

1 The plaintiff, Werner Samuel Vuillemin ("V") is a customer of the defendant, Oversea-Chinese Banking Corporation Limited ("the Bank"). V's main claim against the Bank is in his action in the State Courts of the Republic of Singapore which he has filed. This is District Court Suit No 3051 of 2013 ("DC 3051").

2 In DC 3051, V claims an order for delivery by the Bank to him of contents kept in V's safe deposit box ("the Box") that was located in a branch of the Bank at Specialist Shopping Centre, which was recently re-developed.

3 V also claims, "[a] Court order that the Defendants are responsible and/or liable to the Plaintiff for any mishandling of the [Box] contents and of the whole break into proceedings of the [Box] and all triggered through the Defendants' breaking into the [Box] and into the receptacle"; damages, interest and costs.

4 As V is a foreign national with no permanent presence and no assets in Singapore aside from the contents in the Box, the Bank applied for security for costs against him. On 17 March 2016, an order was made by a Deputy Registrar for him to provide $7,000 as security for the Bank's costs up till the exchange of affidavits of evidence-in-chief ("AEICs") ("the SFC Order"). On 30 March 2016, V filed an appeal, District Court Registrar's Appeal No 23 of 2016 ("RA 23"), which was heard by a District Judge ("DJ") and dismissed on 9 May 2016 ("the Appeal Dismissal Order").

5 On 22 July 2016, V paid $7,000 as security for the Bank's costs. On 3 August 2016, however, V filed Originating Summons No 786 of 2016 ("the Present OS") in the High Court of the Republic of Singapore to seek an extension of time to appeal against the Appeal Dismissal Order dated 9 May 2016. On 18 October 2016, I heard his application for an extension of time and dismissed it with costs. Subsequently, V filed High Court Summons No 5188 of 2016 ("SUM 5188") on 25 October 2016 for leave to appeal against my earlier decision. On 16 November 2016, I heard SUM 5188 and dismissed it with costs as well. I set out my reasons in respect of both my decisions below.

The court's decision on the Present OS

6 The SFC Order dated 17 March 2016 specified that security was to be provided within 14 days. It was an "unless order", *ie*, if V failed to provide the security within the stipulated time, his action would be struck out.

7 On 30 March 2016, V took two steps:

(a) first, he filed an application for an extension of time to provide the security, *ie*, he asked for four weeks to do so from the date an order was made on his application, assuming his application was successful; and

(b) secondly, he also filed RA 23 against the SFC Order dated 17 March 2016.

8 As mentioned, his appeal in RA 23 was dismissed by the Appeal Dismissal Order dated 9 May 2016. Under O 55C r 1(4) of the Rules of Court (Cap 322, R5, 2014 Rev Ed) ("ROC"), any appeal by V from the Appeal Dismissal Order to a judge of the High Court had to be filed within 14 days from 9 May 2016, *ie*, by 23 May 2016 assuming that no leave to appeal was required.

9 V did not file his appeal by 23 May 2016. He said that he left Singapore on 11 May 2016 and returned only on 8 June 2016. The rest of my Grounds of Decision will proceed on the assumption that he did not require leave to appeal against the Appeal Dismissal Order.

10 On 21 June 2016, V's appeal for an extension of time to provide the security was dismissed. On 22 June 2016, default judgment was entered against V, *ie*, his action, DC 3051, was dismissed because he failed to provide the security for costs.

11 V appealed against the decision which dismissed his application for an extension of time to provide the security for costs. His appeal was allowed on or about 15 July 2016 in that he was granted an extension of time till 22 July 2016 to provide the security. If he did so, the default judgment would be set aside without further order.

12 V eventually provided the security on 22 July 2016 by paying $7,000 into court.

13 On 29 July 2016, V attempted to file an application in the State Courts for an extension of time to appeal against the Appeal Dismissal Order. The application was rejected because it was "made out of time and should be heard in the High Court", and that V was "to file the application in the High Court".

14 Hence, on 3 August 2016, V filed the Present OS in the High Court for an extension of time to appeal against the Appeal Dismissal Order.

15 The principles for granting an extension of time are not in dispute. Four factors are to be considered (see *Lee Hsien Loong v Singapore Democratic Party and others and another suit* [2008] 1 SLR(R) 757 at [18]):

(a) the length of the delay;

(b) the reasons for the delay;

(c) the chances of the appeal succeeding if the extension of time were granted; and

(d) the prejudice caused to the would-be respondent if an extension of time were granted.

Length of delay

16 By 3 August 2016, V was out of time by more than two months, since any appeal was to have been filed by 23 May 2016. Even if the date of 29 July 2016 were used, since that was the date when he first attempted to file the application for an extension of time to appeal against the Appeal Dismissal Order, he was still out of time by more than two months.

Reasons for delay

17 V alleged that he was not aware that he could appeal against the Appeal Dismissal Order. He did not have time to think or seek advice about that order which was made on 9 May 2016 as he had left Singapore on 11 May 2016 and returned only on 8 June 2016. It was close to 21 June 2016 (when his application for an extension of time to furnish security was dismissed) that he learned that he could appeal against the Appeal Dismissal Order. Even then he was busy filing an appeal against the decision refusing to grant him an extension of time to provide the security, and making efforts to provide the security of $7,000.

18 I doubted the genuineness of his reasons. When V was ordered by the court on 17 March 2016 to furnish security of $7,000 within 14 days, he knew enough to take the two steps on 30 March 2016 (see [7] above). One was to

apply for an extension of time to provide the security. The other was to appeal against the decision requiring him to provide the security. Yet he alleged that when the Appeal Dismissal Order was made, he did not know he could appeal against that decision. In my view, that was not likely in the circumstances. Either he had a copy of the ROC which he could read for himself or he was consulting a solicitor in Singapore, or both, all along. That was how he came to take the two steps on 30 March 2016.

19 The fact that V was away from Singapore between 11 May 2016 and 8 June 2016 was not particularly disadvantageous to him. With modern means of communication and modern means of access to information, he could have used the time to find out very quickly about whether and when he had to file an appeal against the Appeal Dismissal Order.

20 V deposed that after he returned to Singapore on 8 (or 9) June 2016, he tried to get a solicitor to furnish an undertaking for the security for costs.[1] In my view, he could have used that time to find out quickly whether and when he had to file an appeal against the Appeal Dismissal Order.

21 Furthermore, if it was true that V learned what he had to do only on 21 June 2016, then he should have applied immediately for an extension of time to appeal against the Appeal Dismissal Order. He did not do so. He suggested that he was distracted because he had been focussing on appealing against the other order which was made on 21 June 2016, *ie*, the order which

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[1] V's affidavit of 10 August 2016 at para 24(c)

dismissed his application for an extension of time to provide the security (see [10] above).

22 In my view, the situation was of V's own making. He need not have taken the two steps on 30 March 2016 (see [7] above). He could and should have combined both steps into one, *ie*, he could and should have simply filed one appeal against the SFC Order. In that appeal, he could and should have asked for that order to be set aside or, alternatively, for more time to furnish the security and, also, to delete the "unless order".

23 Furthermore, having taken two steps on 30 March 2016 (see [7] above), I do not see why he was able to focus on only one matter after 21 June 2016. He could have again taken two similar steps:

(a) first, to file an appeal against the order dismissing his application for an extension of time to provide the security; and

(b) secondly, to file an application for an extension of time to appeal against the Appeal Dismissal Order.

24 I did not find V's reasons for the delay convincing.

25 I come now to the merits of V's intended appeal against the Appeal Dismissal Order, which was really an appeal against the SFC Order.

26 Although V's intended appeal was not in respect of the substantive action in DC 3051 but rather on the question of security for costs only, he stressed that he had a good case on the merits of the substantive action. He submitted that he should not have been ordered to provide security for the

Bank's costs because of the strength of his case on the substantive action. On this point, he alleged that the Bank had told various lies, which showed that it had no defence to his substantive action.

27 In my view, the alleged lies of the Bank were not material in the circumstances. I give three examples:

(a) it was not material whether the Bank had lied about sending two prior letters to V about the relocation of the Box before the Bank opened the Box and removed its contents when Specialist Shopping Centre was re-developed;

(b) it was not material whether the terms in certain forms which the Bank was relying on were in fact the forms applicable to the Box; and

(c) it was also not material that the Bank had informed V in a letter (dated 16 October 2009) that he had to sign three forms before collecting the contents of the Box from the Bank, and that the Bank had stated in a subsequent letter (dated 28 October 2009) that he had to sign two out of the three forms to collect the contents.

28 The crux of V's complaint pertained to a meeting on 2 December 2009 he had had with the Bank which his then-solicitor, Mr Kirpal Singh, also attended. V alleged that although he had signed the forms as required by the Bank, he was not allowed to collect the contents of the Box because he had reserved all his rights against the Bank. In his view, the Bank was wrong to do that.

29 However, the point was that even if the Bank had acted wrongly on 2 December 2009, the Bank had subsequently written to V on 10 November 2010. In the letter dated 10 November 2010, the Bank had noted that V did not wish to sign their "prescribed release forms" and had offered an alternative, which was that he was to open the security bags into which the contents of the Box were placed and to account for the contents therein in the presence of the Bank's representatives and its external lawyers and auditors, before the contents were released to him. That letter also stated that the Bank would be happy for V's lawyers to be in attendance as well. It is important to note that this alternative did not require V to waive his rights against the Bank for any of the Bank's previous conduct.

30 However, V did not accept the alternative. The matter dragged on. Apparently there was an exchange of correspondence, and the Bank also sent a letter dated 5 September 2011 to V to ask him to provide a convenient time to meet so that the contents of the Box could be handed over to him or his lawyers in the presence of the Bank's representatives, external lawyers and auditors. Again there was no requirement by the Bank in this letter dated 5 September 2011 that V waive his rights against the Bank in order to collect the contents of the Box. However, V again did not respond favourably to this suggestion.

31 V did not provide any satisfactory explanation as to why he refused to accept the bank's latest suggestion on 10 November 2010 and 5 September 2011. He alleged that the seal on a bag was torn and an inventory list was given to him a few months after the 2 December 2009 meeting. He wanted to bring back the bag and do his own inventory with his own lawyers.

32 In my view V was taking an unreasonably stubborn stance. If the contents in the Box which he was to collect did not accord with what he alleged to have been kept in the Box, it was still open to him to take action against the Bank since he was no longer being asked to waive his rights against the Bank as a condition for collecting the contents of the Box. The point was that there should be no disagreement as to what he was going to collect and for that purpose the Bank wanted its representatives and its external lawyers and auditors to be present. That was a sensible suggestion by the Bank even if it had not acted correctly at the meeting on 2 December 2009.

33 There was some suggestion by V at the hearing before me that he could no longer trust the Bank since he had previously signed the forms but still could not collect the contents of the Box on 2 December 2009. In my view, that was a poor excuse. The bank's letters on 10 November 2010 and 5 September 2011 were clear. If the Bank did not stick to the alternative that it had itself suggested, V could easily apply for a court order to obtain the contents of the Box.

34 Instead, V refused to accept the Bank's suggestion and decided instead to commence DC 3051 in 2013, which resulted in all the consequent applications and appeals on security for costs which I have set out.

35 In my tentative view, since I have not heard all the evidence, there was little merit in the substantive action in so far as V was seeking an order for delivery of the contents of the Box to him. He was the one refusing to take delivery.

36 The question of whether the Bank is to be responsible for any missing contents should be dealt with after he collects the contents of the Box. It is only thereafter that he can then fairly assert what is missing. If there is nothing missing, then it is unclear what damages V is claiming for in respect of the way in which the Bank handled the matter. If he is claiming for damages for being kept out of possession of the contents, he has to prove the damages and bear in mind that he himself refused to accept the Bank's suggestion in 2010 and 2011. In any event, whether or not there is any item missing, it is for V to collect the contents of the Box anyway.

37 In my view, V had focussed only on the earlier conduct of the Bank and ignored the Bank's subsequent suggestion. He failed to examine his own conduct and to appreciate that his own refusal to agree to the Bank's subsequent suggestion reflected poorly on his *bona fides*. Persistence is not a virtue when it is driven by a stubborn attitude.

38 V should have been focussing his attention on getting the contents of the Box back from the Bank as soon as possible. He should have accepted the Bank's suggestion. Having refused to do so and filing DC 3051 instead, he then should have pursued that action to trial as quickly as possible if he were a *bona fide* litigant. Instead, he diverted his attention, and the resources of the Bank and the court, towards arguments over security for costs even after he provided the security. This diversion does not make sense especially bearing in mind that the amount of the security is not very large and he may recover it if he wins the substantive action.

39 V's decision not to agree to the Bank's suggestion and to continue battling over the security for costs issue instead of proceeding with the main action suggested that his real aim is not to recover the contents of the Box as soon as possible but to make life as difficult as possible for the Bank. The latter is not a genuine purpose of litigation.

Chances of appeal succeeding

40 In the circumstances, there seemed to be very little merit in DC 3051 and even less merit in any application for an extension of time to appeal against the Appeal Dismissal Order. I add that nothing that I say is to bind the court which eventually hears the substantive action.

Prejudice to Bank if extension granted

41 In the circumstances, the question of prejudice to the Bank if an extension of time was granted to V was academic. I dismissed V's application for an extension of time to appeal against the Appeal Dismissal Order.

The court's decision on SUM 5188

42 I now elaborate on SUM 5188, which is V's application for an extension of time to appeal to the Court of Appeal against my decision which dismissed the Present OS.

43 Before I continue, I would mention that during the hearing of SUM 5188, I asked V if he was aware that if leave to appeal to the Court of Appeal was granted, he would have to provide security for the costs of that appeal, which could be $20,000. V was not deterred by this sum and still wanted to

obtain leave to appeal, even though this would likely mean a further delay in the hearing of the trial of the substantive action. For clarification, I should add that the security for the costs of an appeal to the Court of Appeal is $15,000 for an appeal against an interlocutory order and $20,000 for all other appeals. In any event, the point is that V's determination to pursue the matter to the Court of Appeal, notwithstanding that a sum larger than $7,000 would then have to be provided as further security for costs, reinforced my earlier view that he was not acting *bona fide*.

44 The factors for an application for leave to appeal to the Court of Appeal were not in dispute (see *Lee Kuan Yew v Tang Liang Hong and another* [1997] 2 SLR(R) 862 at [16]). They are:

(a) *prima facie* case of error;

(b) question of general principle decided for the first time; and

(c) question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage.

Prima facie case of error

45 V submitted that there was a clear *prima facie* case of error as the DJ who made the Appeal Dismissal Order failed to consider the lack of merits of the Bank's defence. In other words, V was saying that he had such a strong case on the merits of the substantive action that the SFC Order should not have been made.

46 I have already elaborated above why I thought there was little merit in his position and will not repeat my reasons here.

Question of general principle decided for the first time

47 V did not suggest that arguments on security for costs were being heard for the first time in Singapore when the Bank's application for such security was initially being heard. Indeed, there have been many decisions on security for costs.

48 His argument that the Bank had lied before and was therefore disentitled to security for costs was not one of general principle but rather an application of principles to the facts of the case, having regard to all the circumstances. Accordingly, the second factor did not apply.

49 It is obvious that there is no general principle that if a party has lied before, he must always be disentitled to security for costs. It depends on the facts of each case.

Question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage

50 V submitted that a decision on how an application for security for costs will be decided will always be helpful to foreign plaintiffs who should be left in no doubt as to their rights.

51 However, as stated above, there have already been many decisions on security for costs. Following what has been stated above, there is no question of importance upon which further argument is required.

Observation

52 I add that the question of leave to appeal to the Court of Appeal arose because V's application for an extension of time to appeal against the Appeal Dismissal Order was filed in the High Court and not in the State Courts. If it had been filed in and dismissed by the State Courts, he would not have been allowed to file an appeal to the Court of Appeal in any event as the High Court would then be the highest court to which the matter could have been taken.

53 Therefore, it was arguable that V was not even entitled to apply for leave to appeal to the Court of Appeal since the substantive action is filed in the State Courts. It should not matter whether his application for an extension of time to appeal against the Appeal Dismissal Order was filed initially in the State Courts or in the High Court. V should not be in a better position for having filed it in the High Court. However, the Bank preferred not to focus on this point but on whether leave to appeal to the Court of Appeal ought to be granted to V. Accordingly, I did not have the benefit of more arguments on the point. I mention it so that hopefully it will be addressed by primary or subsidiary legislation at an appropriate time.

54 Further, O 55C of the ROC on "appeals from District Judges in Chambers", which is the relevant order here, does not make it clear whether the initial application for an extension of time should be made in the State Courts or in the High Court. This is unlike O 55D of the ROC on "appeals from State Courts", r 14 of which provides that the period for filing a notice of appeal from the State Courts may be extended by the High Court. In other words, while O 55D has a r 14 which addresses the point there, there is no

equivalent of that r 14 for O 55C. Perhaps this too can be addressed by subsidiary legislation at an appropriate time.

Application to amend

55 In SUM 5188, there was also a prayer to amend the Present OS to include a prayer for leave to appeal to the High Court against the Appeal Dismissal Order since the security for costs was for $7,000 only. I made no order in respect of that prayer for amendment as it was academic since I did not grant any extension of time to appeal.

Woo Bih Li
Judge

Plaintiff in person;
Adrian Wong, Jansen Chow and Ang Leong Hao (Rajah & Tann Singapore LLP) for the defendant.