Koh Chong Chiah and others *v* Treasure Resort Pte Ltd and another [2014] SGHC 51

Case Number	: Suit No 849 of 2009 (Registrar's Appeal No 399 of 2013)
Decision Date	: 20 March 2014
Tribunal/Court	: High Court
Coram	: Choo Han Teck J
Counsel Name(s)	: Paul Loy, Monica Chong and Benjamin Fong (WongPartnership LLP) for the plaintiffs; Jackson Eng Boon How and Angela Cheng Xingyang (Drew & Napier LLC) for the first defendant; Jonathan Toh (Rajah & Tann LLP) for the second defendant.
Parties	: Koh Chong Chiah and others — Treasure Resort Pte Ltd and another

Civil procedure – Discovery of documents – Application

20 March 2014 Judgment Reserved.

Choo Han Teck J:

1 The plaintiffs are all members of the Sijori Resort Club Sentosa ("Sijori Club") that operated from the premises of a hotel on Sentosa Island. Sijori Club was a club set up by Sijori Resort (Sentosa) Pte Ltd ("SRS"), which owned the hotel and the lease of the land upon which the hotel stood. SRS obtained the lease, which ran from 1994 and would expire in 2075, from Sentosa Development Corporation ("SDC").

2 Treasure Resort Pte Ltd ("the first defendant") was incorporated on 28 June 2005, and on 26 January 2006, it contracted with SRS to take over the lease and hotel. In that contract, the first defendant agreed to:

> offer to members of [Sijori Club] who have contracted with [SRS] a new contract of membership on substantially the same terms and conditions which they (the members) have entered into with [SRS].

The plaintiffs claimed that on 14 November 2006, SRS's lease and contract with SDC was novated to the first defendant. The first defendant had a separate agreement with SDC to redevelop the land on that lease together with an adjacent plot of land separately leased to it. The first defendant denied that it had a novation agreement with SRS.

3 On 16 November 2006, SRS signed the Membership Transfer Agreement with the first defendant. This agreement was intended to supplement the terms of the 26 January 2006 contract. A month later, on 16 December 2006, the first defendant informed the members of the Sijori Club that it was the new operator of the club. The precise status of the first defendant may be a disputed issue at trial, but for present purposes, "operator" may be used to describe the position of the first defendant so far as the Sijori Club was concerned.

4 In its letter to the members, the first defendant stated that the members of the Sijori Club would continue to "enjoy [their] existing privileges as long as [they] continue to make payment of [their] membership fees". On 27 December 2007 the first defendant notified the club members to pay

their monthly dues to it (the first defendant) from January 2007. On 4 February 2008, almost a year later, the first defendant notified the members that a new club membership contract will be offered to the members through the first defendant's associate company, "Colony Members Service Club Pte Ltd" ("the second defendant").

5 The plaintiffs claimed that the terms offered by the second defendant were different and in breach of their agreement with SRS, and the novated agreement. The plaintiffs thus treated the breach as a repudiation which they accepted and thus freed themselves from their obligations to pay their club dues. They subsequently sued the first defendant for breach of contract.

6 There was no pleaded contract between the plaintiffs and the second defendant, and the plaintiffs' case against the second defendant appears to be founded on a tort of conspiracy between the first defendant as the sister company of the second defendant. The plaintiffs alleged that the first defendant had made fraudulent representations, and alternatively, negligent misrepresentations to the plaintiffs.

7 The plaintiffs made an application for discovery of:

> [all] correspondence and minutes of discussions between the [first] defendant and Maxz Universal Group Pte Ltd (or their respective officers) from January 2007 to February 2008 on the incorporation of the [second defendant] and/or the offer of new membership contracts from the [second defendant] to the [plaintiffs].

Maxz Universal Group Pte Ltd is the parent company of the first and second defendants. The plaintiffs' application was dismissed by assistant registrar Karen Tan ("AR Tan"), and they appealed before me.

8 AR Tan was of the view that the plaintiffs did not plead a conspiracy between the parent company and the two defendant companies. She then held that although the documents sought seemed to be relevant in the sense that they appeared to touch on the pleaded facts, she thought that they "were not necessary with respect to the issues" in the case. She went on to hold that it was not necessary "to obtain documents to see what was discussed between the parent company and the first defendant as to the terms of the new membership contracts". AR Tan, in dismissing the plaintiffs' application, held that although the documents sought were relevant, they were not necessary. Before me, counsel for the first defendant relied on the decision in *Bayerische Hypo- und Vereinsbank AG v Asia Pacific Breweries (Singapore) Pte Ltd and other applications* [2004] 4 SLR(R) 39 ("*Bayerische*") in support of their submission and AR Tan's decision. It was argued that the plaintiffs' claim in conspiracy as pleaded did not include the defendants' parent company.

9 I have no disagreement in principle with the decision of Belinda Ang J in *Bayerische* that no discovery order should generally be made unless the court is satisfied that (apart from the requirement of showing that the documents were in the hands of the respondent) the documents sought by the applicant are relevant and necessary. In that case, the court referred to O 24 rr (7) and (13) of the Rules of Court (Cap 322, R 5, 2004 Rev Ed), the provisions of which are similar to their numerical equivalents in the Rules of Court (Cap 322, R 5, 2006 Rev Ed). Rule 7 provides that an order for discovery will not be made unless the court is satisfied that discovery is necessary for "disposing fairly of the cause or matter" – or for saving costs. Rule 13 refers to the production and inspection of documents and imposes the same criterion of necessity for fairly disposing of the cause or matter or for saving costs. Although "relevance" is not a stated criterion under O 24 r 7, it is the foundation for the admission of evidence at trial. The relevancy of evidence, including documentary evidence, is spelt out in the Evidence Act (Cap 97, 1997 Rev Ed) ("Evidence Act"). "Relevance" is required to be shown in applications under O 24 r 6, namely, pre-action applications for discovery and applications

by persons who are not parties to the action. In this regard, relevance is a requirement without which, an examination of necessity would be pointless.

10 In my view, the application of the "necessity" requirement under O 24 must be made with an eye on the Evidence Act, which is primary legislation. *Bayerische* was a case concerning a pre-action discovery application. That is an important distinction from the application sought in this case before me. Here, the plaintiffs' statement of claim had been filed and served, and the defendants have filed and served their defences. There is a joinder of issues for the action. When one asks whether something is necessary, it is also necessary to ask, "Necessary for what?" What is necessary or unnecessary before a litigant has filed his claim may turn out otherwise after the pleadings have closed. The question as to what is necessary may differ at the different stages of proceedings in the action. This line of reasoning is consistent with the wording of O 24 r 7, in which specific reference is made to "that stage of the cause or matter".

11 When the parties are joined in issue such as in this case, where the plaintiffs alleged fraud and bad faith on the part of the first defendant, and pleaded that it was a conspiracy by the two sister companies to deprive the plaintiffs of their rights under a novated contract, documents tending to show what instructions the parent company might have issued to its subsidiaries are clearly relevant. The documents may adversely affect the defendants' case, and if so, are proper subjects for a discovery order (see O 24 r 5(3)). Unlike pre-action discovery, when pleadings have closed or where a defence had been filed, the necessity of showing those documents is no longer a trace element. The requirement of necessity at this stage and in the circumstances of this case is *entwined* with the requirement of relevance.

12 Had this been a pre-action discovery application, one can say that the documents of a parent company might be relevant to the objects of the subsidiary, but may not be necessary for the plaintiffs to discover in order to plead their case, especially where fraud is concerned. When enough has been pleaded to identify the alleged fraudulent conduct of the defendants, documents that might show the involvement of parties connected to the defendants may not only be relevant but necessary. Once the plaintiffs have pleaded their case and the defendants have disclosed their defence, relevant documents in the hands of a third party like the parent company of the defendants may also be necessary, for example, to help determine whether the parent company ought to be cited as a third defendant. Whether the documents sought are relevant and necessary is a question of fact. In this case, I am of the view that the documents are relevant, as well as necessary.

13 I should add that the discovery of the documents sought here will likely result in the saving of costs. The plaintiffs would be entitled at trial to cross-examine the defendants as to the instructions they received from their parent company on the terms which were to be offered to the club members. The answers may likely lead to the relevance and necessity of reading the documented discussions and instructions. Production of documents only at that stage may hamper the plaintiffs' preparation and result in the prolongation of trial. These documents are best disclosed early.

14 For the reasons above, the appeal by the plaintiffs is allowed. Costs here and below will be costs in the cause.