IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 36

HC/Suit No 119 of 2018
(HC/Registrar's Appeal No 6 of 2019)

Between

Qroi Limited

… *Plaintiff*

And

(1) Ian Pascoe
(2) Grant Thornton Advisory Services Co, Ltd

… *Defendants*

GROUNDS OF DECISION

[Civil Procedure] – [Striking out]

Qroi Ltd
v
Pascoe, Ian and another

[2019] SGHC 36

High Court — HC/Suit No 119 of 2018 (HC/Registrar's Appeal No 6 of 2019)
Choo Han Teck J
29 January 2019; 31 January 2019

21 February 2019

Choo Han Teck J:

1 This is the first defendant's appeal against the learned Assistant Registrar Norine Tan Yan Ling's ("AR Tan") dismissal of the first defendant's application to strike out the plaintiff's claim. The plaintiff is a company incorporated in Hong Kong, providing end-to-end technical services and technology solutions to mobile operators in Southeast Asia. The second defendant, is a company incorporated in Myanmar. The first defendant, is the managing partner of the second defendant and six other Thailand-incorporated entitles bearing the "Grant Thornton" brand name.

2 The plaintiff commenced this action against the defendants for the non-payment of services delivered pursuant to a letter of intent dated 19 August 2016 ("the Agreement"). The plaintiff's claim against the first defendant is based on a breach of warranty of authority. The essence of the plaintiff's claim is that the first defendant represented that he was acting on behalf of a Grant Thornton

entity in Thailand ("Grant Thornton Thailand") when he negotiated and executed the Agreement. In reliance of the first defendant's warranty of authority, the plaintiff entered into the Agreement. Subsequently, when the plaintiff demanded payment from Grant Thornton Thailand under the Agreement, the first defendant demurred and said that he was acting on behalf of the second defendant, who is the proper party to the Agreement, and not Grant Thornton Thailand.

3 On 12 November 2018, the first defendant applied to strike out the plaintiff's action. The application was dismissed by AR Tan on the basis that the threshold for striking out was not met and the issues should be tested at trial. The first defendant appealed before me against AR Tan's decision. In support of the first defendant's application for striking out, counsel for the first defendant, Mr Jordan Tan, raised two arguments that the plaintiff's statement of claim disclosed no reasonable cause of action (O 18 r 19(1)(a) Rules of Court) or was frivolous and vexatious (O 18 r 19(1)(b) Rules of Court).

4 First, Mr Tan argued that since the first defendant had the authority to act for all the Grant Thornton Thailand entities and the second defendant, the plaintiff had no cause of action for a breach of warranty of authority because the plaintiff failed to identify any entity for which the first defendant had no authority to act in the plaintiff's statement of claim. In essence, Mr Tan submitted that "this is not a dispute about authority but a dispute about the proper party to the [Agreement]". Counsel for the plaintiff, Mr Kenneth Lim, argued that the plaintiff's statement of claim had pleaded the necessary elements for an action for a breach of warranty. Mr Tan cited numerous cases and argued

that the law supports his case but I think they do not, for the issues in those cases were determined only after trial. In any event, even if the law is presently on his side so far as the proper parties' issue is concerned, the plaintiff is entitled to challenge that law or the application of it. So long as the court may still disagree with current judicial thinking, the plaintiff is entitled to have his action proceeded. The principle here is simple — if Newcastle United can beat Manchester City in the English Premier League, anything can happen.

5 Secondly, citing the English decision of *Rainbow v Howkins* [1904] 2 KB 322, Mr Tan raised the alternative argument that the plaintiff cannot claim against the first defendant for the loss suffered arising from the non-performance of the Agreement because an agent is not responsible for loss caused by his principal's non-performance. On the contrary, relying on the case of *Fong Maun Yee v Yoong Weng Ho Robert* [1997] 1 SLR(R) 751, Mr Lim submitted that the first defendant is liable for the loss caused to the plaintiff as a result of the first defendant's breach of his warranty of authority which the plaintiff relied upon. The first defendant's case is dependent on the fact that he was acting as the agent of the second defendant, a fact that the plaintiff challenges. This is a serious and reasonable challenge that ought to be fully ventilated in the open trial.

6 The plaintiff's case should only be struck out in a plain and obvious case or if it was clearly unsustainable. The threshold for striking out is high, and even if the plaintiff's claim seems weak, but so long as there are issues of fact and law that need to be proven, no claim should be struck out without trial. In my view, the plaintiff's claim here is a reasonable one, and if proved, it should be

granted the relief it seeks. That is what the trial is for. This appeal is therefore dismissed with costs reserved to the trial judge.

- Sgd -
Choo Han Teck
Judge

Kenneth Lim and Mehaerun Simaa (Allen & Gledhill LLP) for Plaintiff;
Tan Zhengxian, Jordan (Cavenagh Law LLP) for First Defendant.