Fide Living Pte Ltd and Others v Trans Living International Pte Ltd [2010] SGDC 149

Case Number : DC Suit 3370/2009, RA 35/2010, RAS 43/2010

Decision Date : 08 April 2010

Tribunal/Court : District Court

Coram : Leslie Chew

Counsel Name(s) : Derek Kang & Ross Tan (Rodyk & Davidson) for the plaintiffs; Abraham Vergis & Adrian Tan (Drew & Napier) for the defendants

Parties : Fide Living Pte Ltd; Fide Multimedia Pte Ltd; Beaumont Publishing Pte Ltd — Trans Living International Pte Ltd

08 April 2010

District Judge Leslie Chew:

Background

1 This an appeal by the Defendant against the Deputy Registrar's decision granting the 1st Plaintiffs summary judgment for the sum of $77,575 being the sum they claimed is due from the Defendant in respect of rentals arising out of the showroom at 112 , Killiney Road (the Showroom) for the display of furniture.

2 The Defendants of course say they are not liable. Essentially, the Defendants contend that while there were discussions in respect of their intended hiring of the showroom, no agreement was ever reached between the 1st Plaintiffs and them.

The Evidence

3 The 1st Plaintiffs claim is based on oral discussions between parties which the 1st Plaintiffs argued are evidenced by a series of oral discussions, short messages via mobile phone ('sms') e-mails and draft agreements.

4 Principally, the 1st Plaintiffs rely on the Showroom Agreement dated 27 Feb 2009 and another undated, which they say represented a variation of the first. Essentially therefore the 1st Plaintiffs' claim is premised on an oral agreement which they say is evidenced by exchanges of sms and e-mails. Further the 1st Plaintiffs rely on two written draft agreements which they claim represent the contract, the later one having varied the earlier one.

5 The Defendants point to the fact that in reality while the 1st Plaintiffs refer to and rely on the two written draft agreements, these were never signed. More crucially, they contend that the various exchanges of 'sms' and e-mails and other communications do not show any agreement but mere references to some negotiation on the hiring of the Showroom.

6 The Defendant argued that the 1st Plaintiffs' reliance on oral agreements was not supported by any corroborative document, the 'sms' and e-mail exchanges apart, the interpretation on which the Defendants dispute.

The Court's Decision

7 I accept the Plaintiff Counsel's submission that the Defendant appeared through various communications between parties to have accepted that they must pay for the use of the Showroom contrary to their previous position when they first argued before the Deputy Registrar.

8 However, that is far from saying that the parties and more specifically the Defendants had agreed to pay the rental sums in respect of the Showroom as claimed by the 1st Plaintiffs.

9 As Defendant Counsel rightly pointed out the 1st draft Agreement dated 27 Feb 2009 did not refer to any particular commencement date of the agreement which in the case of this type of agreements would have been critical. Moreover it is not disputed that this agreement was never signed.

10 The subsequent version of the draft agreement which was undated and unsigned by parties also in my view, did not assist the 1st Plaintiffs in the context of an O 14 application which is what was before me. This is simply because this was intended to represent a variation of the 1st agreement. Unless there has been agreement on the terms of the 1st draft agreement dated 27 Feb 2009 between parties the subsequent variation would be academic.

11 The real question is therefore whether on present evidence, it is clear that the parties had reached an agreement on the terms of the rental of the Showroom including the rental amount which formed the basis of the present claim by the 1st Plaintiffs. It seemed to me that while there is much evidence making various references to the terms of the rental of the Showroom including the draft agreements, the 1st Plaintiffs are not able to point definitively to any document or communication which clearly and expressly showed that parties had agreed to the terms of the rental of the Showroom. That being the case there is no clear evidence here to warrant a conclusion that there was already a contract between parties with specific terms including the quantum of the rental to be paid by the Defendants. There is therefore, in my view, reasonable doubt that the 1st Plaintiffs ought to have summary judgment.

12 The Defendants, on the other hand have disputed the claim and have shown that there although there may be some evidence suggestive of an agreement between parties, there is however, no clear evidence on the documentary evidence before this court that the parties had agreed on the terms and had concluded a contract on the rental of the Showroom. The Defendants have also referred to the fact that soon after they received a draft agreement for the Showroom in Aug 2009, which surprised them, they responded by seeking to remove their furniture from the Showroom. The Defendants denied receiving the 1st draft agreement. This is of course disputed by the 1st Plaintiffs. There is much dispute over this issue. The Defendants also say they only received 'a' draft agreement sometime in August and they refer to the subsequent draft which I have referred to. There is however no direct evidence either way. The evidence on both sides is based on assertions made in the affidavits filed by both parties.

13 In the context of summary judgment applications, the test is clear. For the 1st Plaintiffs to obtain summary judgment, it is must be a clear case. There must be no reasonable doubt that they should have summary judgment – see *Habibullah Mohamed Yousuff v Indian Bank* [1999] 3 SLR 650 at paragraph 21. Equally, if the Defendant can raise a triable issue then again the 1st Plaintiffs are not entitled to summary judgment.

14 In the present case either way one looks at the dispute there is much to be investigated as to both the fact of agreement and if indeed there was agreement, the terms thereof. That is often the problem facing the claimant where, as here, the claim is based on oral agreements. In such cases unless there is clear evidence supporting an assertion of an oral agreement, it would not be right in principle for a court to grant summary judgment. Based on the affidavit evidence before me I did not think there was clear evidence to support the case for summary judgment. Alternatively, the Defendant has raised issues which ought to be tried. These relate to whether there was an agreement the fact of which they disputed and the precise terms of the agreement between the parties. At this stage, it is sufficient for the Defendants to raise these issues. It is not for this court at this stage to assess whether the Defendants will succeed – see *Jacobs v Booth's Distillery* (1901) 85 LT 262. For this reason, it seemed to me that looking at the overall picture of the affidavit evidence before me, a trial where the assertions made by both sides may be tested by cross-examination is warranted in this case.

15 For the reasons I have set out, I allowed the Defendant's appeal in respect of the 1st Plaintiffs' claim.

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