

IN THE COURT OF APPEAL OF BRUNEI DARUSSALAM

CIVIL APPEAL NO. 2 OF 1999

BETWEEN

STANDARD CHARTERED BANK

..... Appellant

AND

HANNS GERT RADEMACHER

..... Respondent

Before : FUAD, P.; HUGGINS, J.A. AND CONS, J.A..

Date of Hearing : 22 APRIL 1999.

Date of Judgment : 26 APRIL 1999.

J U D G M E N T

FUAD, P.:

This appeal, when filed, concerned the proper interpretation and application of the Diplomatic Privileges (Vienna Convention) Act, Cap. 117 ["the Act"] which gave the force of law in Brunei to certain Articles of the Vienna Convention on Diplomatic Relations, signed in 1961.

The course of the proceedings before the High Court was as follows. On 10 December 1998, the Standard Chartered Bank ["the Bank"] issued a writ with a statement of claim against Hanns Rademacher, one of its customers, claiming the amounts due on a loan facility and on a credit card account. At the date of the issue of the writ, the sums allegedly due were, respectively, BND 114,989.25 and BND 5,726.30.

On 12 December 1998 the defendant entered unconditional appearance. On 13 January 1999 the Bank obtained judgment against him in default of filing a defence for the amounts claimed, with contractual and judgment interest, and fixed costs. The

defendant was also ordered to make full indemnity in respect of the Bank's legal fees and expenses. On the following day the defendant took out a summons seeking an order for the action, the writ, and statement of claim to be set aside on the ground that he was a member of the diplomatic delegation of the Federal Republic of Germany, and thus the Court lacked jurisdiction.

Before that summons could be heard, the defendant issued another summons (on 27 January 1999) for an order to set aside the judgment in default, again claiming diplomatic immunity. In an affidavit supporting this summons, the defendant annexed copies of documents to make good his assertion that he was the First Secretary of the diplomatic mission of the German Embassy.

The Chief Justice heard the defendant's second summons first - that which sought to have the default judgment set aside. This was at the defendant's request. In his reserved judgment, given on 27 February 1999, the Chief Justice dealt with a number of issues but the sole issue which was to be the subject of this appeal was the true meaning and proper application of Article 31(1)(c) set out in the Schedule to the Act on the basis that it had been established that the defendant was a "diplomatic agent" as defined in Article 1 (e) and that his immunity from the jurisdiction of the Court had not been expressly waived as required by Article 32.2..

The Chief Justice concluded that there was no evidence that the defendant, in obtaining facilities, or a credit card, from the Bank, was ever himself taking part in a commercial activity. He therefore found that the defendant was protected in respect of those transactions and that the jurisdiction of the courts of Brunei was ousted. It followed that, in view of the provisions of Cap. 117 and of the Convention, the judgment in default of defence dated 13.1.99 would be set aside.

The judge gave the defendant unconditional leave to defend and ordered him to pay the costs of all proceedings in the matter.

This did not conclude the proceedings in the High Court. On 3 March 1999 the Bank's solicitor's applied to the Court for the matter to be adjourned into Court for further argument, pursuant to O.56, r.2(2) of the Rules of Court. The Chief Justice acceded to the Bank's request and on 18 March delivered judgment maintaining his decision to set aside the judgment in default. He made no order as to costs.

We have been informed that Mr Rademacher left the jurisdiction on 31 March

1999 on completion of his duties as First Secretary in the German Embassy. His immunity thus came to an end (Article 39.2).

At the outset of the hearing of this appeal, Mr Y.C. Lee, for Mr Rademacher, informed us that his client would submit to judgment. We invited argument on the question whether it was proper for us to continue hearing the appeal. After Mr Sandhu, for the Bank, had an opportunity of considering the matter, he conceded that in all the circumstances, if the appeal continued, the Court would be asked to decide an academic or hypothetical question and invited us to dismiss the appeal with no order as to costs. Mr Y.C. Lee had no submissions to make on the order proposed by Mr Sandhu.

We think that Mr Sandhu was right to make the concession because once the defendant consented to judgment being entered against him, there remained no actual controversy between the parties. Of course the question intended to be raised in the appeal was a matter of public importance, but any decision we made on the proper meaning and application of Article 31(c) could not be a useful precedent because the decision in each case where that Article fell to be applied would be governed by the particular facts and circumstances which gave rise to the cause of action.

By consent, we enter judgment in favour of the Bank in the terms of the judgment dated 13 January 1999 which the Chief Justice set aside and dismiss the appeal with no order as to costs.

KUTLU TEKIN FUAD
President, Court of Appeal

SIR ALAN HUGGINS
Judge, Court of Appeal

SIR DEREK CONS
Judge, Court of Appeal

Mr Daljit Singh Sandhu
Mr Geoffrey Sim and

for the Appellant

Mr Vincent Joseph.

Mr Adrian C.F. Chan

Mr Y.C. Lee

for the former solicitor
for the Bank

for the Respondent