

SALVIN FAR EAST (B) SDN BHD

... Plaintiff

AND

MASHHOR OFFSHORE PAINTING SERVICES SDN BHD

... Defendant

(High Court of Brunei Darussalam)
(Civil Suit No. 21 of 2022)

Muhammed Faisal bin PDJLD Kol (B) DSP Hj Kefli, JC

Date of Judgment: 12th December, 2024.

*Headnote: Contract law – charter party agreement – Appeal against registrar’s decision
dismissing summary judgment application*

Mr. K Lim & Mr. Cedric Lu (M/S Raed Lim Advocates & Solicitors) for Plaintiff.

Mr. C Calabazaron & Mr. Adrian Chan (M/S Rudi Lee, Annie Kon & Associates) for Defendant.

Cases cited:

Re Trepica Mines Ltd (No. 2) [1963] Ch 19

Linden Gardens Trust Ltd v Lenesta Sludge Disposals Ltd [1994] 1 AC 85

Helstan Securities Ltd v Hertfordshire County Council [1978] 3 All ER 262

JUDGMENT

Muhammed Faisal, JC:

I. INTRODUCTION

This is an appeal by the 1st Plaintiff, Salvin Far East (B) Sdn Bhd, against the Registrar’s decision dated 6 June 2024, dismissing its application for summary judgment. The claim concerns a sum of BND 14,137.55, representing reimbursement for items procured on behalf of the Defendant, Mashhor Offshore Painting Services Sdn Bhd, during the management of two vessels, the MV Salvin Ruby and MV Salvin Topaz.

The 1st Plaintiff seeks to recover this amount under a Deed of Assignment (DA) dated 1 June 2022, wherein the 2nd Plaintiff, Salvin Far East Ltd, purportedly assigned certain claims to the 1st Plaintiff. The Defendant disputes the validity of this assignment and

raises several procedural and substantive defences, arguing that the matter is unsuitable for summary judgment.

II. THE PLAINTIFF'S CASE

The Plaintiff, Salvin Far East (B) Sdn Bhd, is appealing against the Registrar's decision dated 6 June 2024, which dismissed its summary judgment application for BND14,137.55. This amount represents reimbursement for items procured on behalf of the Defendant, Mashhor Offshore Painting Services Sdn Bhd, during the management period of two vessels, the MV Salvin Ruby and MV Salvin Topaz. The Plaintiff contends that this claim is distinct from other claims tied to the charterparty agreements and is independent of ongoing arbitration proceedings initiated by the 2nd Plaintiff, Salvin Far East Ltd.

As stated above, the 1st Plaintiff's claim arises from a Deed of Assignment executed on 1 June 2022, wherein the 2nd Plaintiff assigned certain claims to the 1st Plaintiff. While most of these claims were subsequently reassigned to the 2nd Plaintiff on 19 September 2023 and are subject to arbitration in Singapore, the claim for BND14,137.55 was explicitly retained by the 1st Plaintiff. The Plaintiff asserts that this claim is for direct expenses incurred and acknowledged by the Defendant, making it unrelated to the arbitration proceedings or the terms of the charterparty agreements.

In support of its claim, the Plaintiff relies on evidence, including admissions from the Defendant's senior accountant in email correspondence acknowledging the debt. The Plaintiff argues that this clear and unequivocal admission establishes liability, leaving no triable issue for the court. The Plaintiff further submits that procedural objections raised by the Defendant, such as the validity of the Deed of Assignment and arbitration requirements, are irrelevant to this specific claim. Consequently, the Plaintiff seeks judgment for the sum of BND14,137.55, asserting that the Defendant has no substantive defence to the claim.

The Plaintiff submits that there are no triable issues in this matter, and summary judgment is appropriate.

III. THE DEFENDANT'S CASE

The Defendant, Mashhor Offshore Painting Services Sdn Bhd, argues that the claim for BND14,137.55 is procedurally and substantively flawed. The Defendant's primary contention is that the claim stems from a Deed of Assignment dated 1 June 2022, which is invalid due to a breach of the non-assignment clause within the charterparty

agreements governing the parties' relationship. As such, the defendant asserts that there is no contractual relationship between itself and the 1st Plaintiff.

The Defendant emphasises that the charterparty agreements require disputes to be resolved through arbitration, as mandated by their terms. They argue that this jurisdictional requirement extends to the claim for BND14,137.55, rendering the court an improper forum for resolving the matter. Furthermore, the defendant contends that the 1st Plaintiff's actions, including the subsequent Deed of Reassignment on 19 September 2023, undermine the validity of the current proceedings. According to the defence, the reassignment to the 2nd Plaintiff of all claims under the original Deed of Assignment, except for the current claim, raises procedural irregularities that should preclude summary judgment.

Additionally, the Defendant challenges the substance of the Plaintiff's claim, asserting that it raises issues of fact that necessitate a trial. They argue that the admissions cited by the Plaintiff, including emails from the Defendant's senior accountant, do not constitute unequivocal acknowledgments of liability. In conclusion, the Defendant asserts that the 1st Plaintiff's claim is intertwined with broader disputes that are better suited for arbitration, and they request the court to uphold the Registrar's decision to dismiss the summary judgment application.

Issues raised by the Defendant:

Validity of the Deed of Assignment. The Defendant contends that the deed of assignment is a sham and fictitious document created to justify the 1st Plaintiff's claim. Procedural irregularities, including the delayed production of the deed of assignment and inconsistencies in its terms, are highlighted to support this argument.

Champerty. The Defendant submits that the deed of assignment assigns a bare right to litigate, violating the principle of champerty (*Re Trepica Mines Ltd (No. 2) [1963] Ch 19*), where the assignment of a "*bare right to litigate*" is prohibited under common law.

Breach of Non-Assignment Clause. The Defendant argues that the assignment violates Clause 20(b) of the charterparty agreements, which prohibits assignments without the Defendant's written approval. This argument is supported by authorities such as *Linden Gardens Trust Ltd v Lenesta Sludge Disposals Ltd [1994] 1 AC 85* and *Helstan Securities Ltd v Hertfordshire County Council [1978] 3 All ER 262*, which affirm that assignments breaching non-assignment clauses are void and unenforceable.

Substantive Defences. The Defendant disputes the claimed amount, asserting that all costs were covered under an agreed daily hire rate, which already accounted for management and operational expenses.

The Defendant concludes that these issues require further investigation and that the Registrar was correct to dismiss the summary judgment application.

IV. AREAS OF AGREEMENT AND KEY DIFFERENCES

Both parties agree that the claim pertains to items procured during the vessels' management period. It is not disputed that the deed of assignment is the basis for the 1st Plaintiff's claim and that the Defendant has acknowledged the amount claimed in prior correspondence.

What parties disagree includes the validity and enforceability of the deed of assignment, whether the deed of assignment constitutes champerty and violates the non-assignment clause as well as the substantive merits of the claim, particularly whether the amount claimed was included in pre-existing agreements.

V. ASSESSMENT OF THE PARTIES' POSITIONS

The defence has raised significant procedural and substantive issues that create doubt over the Plaintiff's claim. The validity of the deed of assignment, whereby the Defendant's arguments regarding procedural irregularities, inconsistencies, and delayed production of the deed of assignment may raise genuine questions about its authenticity.

The defence also argues that the that the deed of assignment constitutes a bare right to litigate is supported by *Re Trepica Mines Ltd (No. 2)* and reinforces concerns about improper assignments undermining court processes.

The Defendant's reliance on *Linden Gardens Trust Ltd and Helstan Securities Ltd* provides a strong legal basis for arguing that the deed of assignment is unenforceable due to the breach of contractual terms.

The Plaintiff's case is heavily dependent on the deed of assignment, which has been placed is under serious scrutiny. Due to its reliance on the deed of assignment, the Plaintiff has not adequately addressed the defendant's submission of procedural impropriety or addressed the inconsistencies in the deed of assignment.

The Defendant's narrative, while comprehensive, appears overly intricate and potentially dilutes their core arguments. The clear admission by the Defendant's senior accountant of the amount owed is a significant point against them. However, this does not negate the procedural and substantive issues raised.

VI. DECISION

The court acknowledge the fact that on the face of it, when reading the emails between representative of both parties, there seems to be an admission of liability by the Defendant's senior accountant (for the amount of BND14,137.55) and recognises the potential overcomplication of the Defendant's arguments. However, the issues surrounding the validity of the deed of assignment, champerty, and the non-assignment clause are material and cannot be resolved without a full examination of evidence.

In this case, the Defendant has raised sufficient questions regarding procedural irregularities, public policy, and substantive defence's to warrant a trial.

This court is of the view that the matter is best ventilated through a proper trial, where all issues can be fully explored. Summary judgment is therefore inappropriate in the circumstances.

The appeal is dismissed. The Registrar's decision to deny the summary judgment is upheld. The matter shall proceed to trial, with costs in the cause.

MUHAMMED FAISAL BIN PDJLD KOL (B) DSP HJ KEFLI

Judicial Commissioner