

16, 1969

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

No.5 of 1968

ON APPEAL FROM THE FEDERAL COURT OF MALAYSIA

B E T W E E N :

PEGANG MINING COMPANY LIMITED
(formerly known as Pegang
Prospecting Company Limited)

Appellant

- and -

CHOONG SAM, Intervener (added
by Order of Federal Court
dated 17th July 1967)

First Respondent

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES

- and -

- 9 MAR 1970 LEE CHIM YEE and CHAN HON
PENG (f) as Executors of the
25 RUSSEL SQ Estate of Chan Phcoi Hong
LONDON W1 Deceased.

Second Respondents

- and -

TONG SWEE KING (f) as Execu-
trix of the Estate of Ho Kok
Yew deceased.

Third Respondent

C A S E FOR SECOND RESPONDENTS

1. The Second Respondents respectfully adopt the matters set out in the Case of the First Respondent including the submissions and reasons therein stated.

2. The Second Respondents were the Second Defendants in the action brought by the Third Respondent to this Appeal in the High Court of Malaya and by their Defence the Second Respondents admitted the validity of the claim of the Third Respondent (as Plaintiff) against them and also against the

p.1.

p.37

A

Appellant to this Appeal.

The said Defence contained the following paragraph:-

p.37,1.7 to A.5

"2. The Second Defendants have always been ready and willing to do everything in their power to fulfil their obligations to the Plaintiff but have been unable to do so because the First Defendant has refused to adhere to its obligations to the Second Defendants as set out in detail in the Statement of Claim".

pp.45 to 52

3. The position of the Second Respondents in the High Court action was dealt with by the learned Judge (Ali J.) in the concluding part of his Judgment in the following way:-

A

p.51,1.C9 to
p.52, 1.B4

"With regard to the plaintiff's claim against the 2nd defendants, it is difficult to find from the plaintiff's pleadings whether she had any real cause of action, but in view of the conclusion which I have arrived at, the proper order, I think, would be to enter judgment for the 2nd defendants as well.

B

"On the question of costs, the 1st defendant company of course must be entitled to the full taxed costs, but the same cannot in my judgment be ordered in respect of the 2nd defendants. In terms of the plaintiff's pleadings it must have been obvious to the 2nd defendants that inasmuch as no allegation of breach of contract had been made against them there was no real cause of action by the plaintiff. The 2nd defendants, if they were so minded, could have, after the close of the pleadings, applied to have the action against them dismissed. Indeed, it was apparent during the trial that the 2nd defendants were in fact supporting the plaintiff's claim. The reason for this is quite obvious for if the plaintiff succeeds in this action, the 2nd defendants stand to benefit by it. It is difficult to understand why the 2nd defendants had not been joined as plaintiffs in this action. But as the plaintiff has chosen to bring this action in this form, she must also be made to bear the 2nd defendants' costs, but in view of what I have stated, there will be an order that the plaintiff shall pay the 2nd defendants' costs to be taxed up to the time when the pleadings were closed."

C

D

4. The Second Respondents, although as Second Defendants a successful party in the proceedings, therefore had a legal and financial interest in an Appeal against the decision of the High Court succeeding. They were, however, made parties as Second Respondents in the Notice of Appeal. When the First Respondent made his application to intervene in the proceedings following the purported settlement of the Appeal, Chan Hon Peng, with the authority of his co-executor, swore an Affidavit on the 27th March 1967 on behalf of the Second Respondents, who were not a party to the said purported settlement, in which he stated (inter alia) that the Second Respondents were desirous of pursuing the Appeal, that the Estate had a direct legal interest in the claim and in the appeal and that the Second Respondents were prepared to be substituted as Appellants. They therefore appeared on the 2nd May 1967 before the Federal Court and supported the application of the First Respondent (as Intervener). By Order of the Court dated the 17th July 1967 the Second Respondents became (by consent) added as second Appellants instead of continuing as second Respondents.
5. The Second Respondents submit that insofar as it affected their change of status in the Appeal, such order was within the competence of the Federal Court of Appeal, the legal interest of the Second Respondents having been established (it is submitted correctly) by the learned Judge of the High Court.
6. Accordingly, the Second Respondents respectfully submit that this Appeal should be dismissed and that the said Judgment and Order of the Federal Court of Malaysia dated the 17th July 1967 should be affirmed and that the Appellant should be ordered to pay the costs of this Appeal for the reasons set out in the Case for the First Respondent.

p.55

pp. 83 & 84

p.83,11.A9 to
B1 & C3 to C6

pp.93 to 109
(p.96,1.B1 &
p.103,1.B7)

p.133

p.133

E.F.N. GRATIAEN, Q.C.

JOHN H. BAKER

No. 5 of 1968

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THE PRIVY COUNCIL

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COURT OF MALAYSIA

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trix of the Estate of Ho Kok
Yew deceased.

Third Respondent

CASE FOR SECOND RESPONDENTS

Graham Page & Co.,
St. Margarets Mansions,
49-55 Victoria Street,
Westminster,
London, S.W.1.