Chun Thong Ping v Soh Kok Hong and Another
[2003] SGHC 172

Case Number : Suit 419/2003, RA 235/2003, SIC 4472/2003

Decision Date : 08 August 2003

Tribunal/Court : High Court

Coram : Tay Yong Kwang J

Counsel Name(s) : Chen Chuen Tat (Acies Law Corporation) for the Plaintiff; Sarbjit Singh (M/s Lim & Lim) for the Second Defendant

Parties : Chun Thong Ping — Soh Kok Hong; Wee Teck Lee

Civil Procedure – Summary judgment – Whether application to amend statement of claim could be heard pending appeal against decision in respect of O 14 application based on original statement of claim – Rules of Court (Cap 322, R 5, 1997 Rev Ed) O 14

1 On 2 May 2003, the Plaintiff commenced this action against the Defendants. The Statement of Claim set out his claim succinctly as follows:

> "1. By a written Promissory Note dated 19th January 2000 entered into between the parties, both the Defendants have jointly and severally promised to pay to the Plaintiff the sum of $600,000.00 within three (3) months from the date of the said Promissory Note.
>
> 2. More than three (3) months have since elapsed and despite repeated requests and demands last resting with the Plaintiff's solicitors' letter dated 25th April 2003, both the Defendants have to date failed, refused and/or neglected to pay to the Plaintiff the said sum of $600,000.00 and/or any sums at all."

The Statement of Claim then asked for judgment for the said sum together with interest and costs.

2. On 6 June 2003, the Second Defendant filed his Defence to the claim. On 13 June 2003, the Plaintiff took out an application under Order 14 of the Rules of Court against the Second Defendant. On the same day, judgment in default of Defence was entered against the First Defendant.

3. On 16 July 2003, an Assistant Registrar heard the Order 14 application and granted the Second Defendant unconditional leave to defend the claim.

4. On 21 July 2003, the Plaintiff applied to amend the Statement of Claim by including an additional averment which reads:

> "2. Further and/or alternatively, the Plaintiff avers that by an agreement entered into between the Plaintiff and both the Defendants, the Plaintiff did at the joint and several request of both the Defendants give a friendly interest-free loan of $600,000.00 to both of the Defendants, receipt of which were acknowledged and that the said loan was repayable by both the Defendants three (3) months from the date of the agreement. The said agreement was evidenced in writing by way of a written Promissory Note dated 19th January 2000 executed by the parties before an advocate and solicitor as a witness."

5. On 28 July 2003, the Plaintiff lodged an appeal against the Assistant Registrar's decision in respect of the Order 14 application.

6. On 4 August 2003, the application to amend was heard by the Assistant Registrar. The

Second Defendant objected to the application on the ground that the application was improper at that stage as there was a pending appeal based on the original Statement of Claim. The Assistant Registrar then ordered that the application to amend be heard together with the appeal.

The Appeal

7. On 6 August 2003, the parties appeared before me. Counsel for the Plaintiff informed me that he was applying to amend the Statement of Claim and would be proceeding with the appeal on the alternative claim thereafter. I indicated to the parties that the correct approach should be to withdraw the appeal and to proceed with a fresh Order 14 application based on the amended Statement of Claim if the Plaintiff so wished.

8. Counsel for the Plaintiff then applied to withdraw the appeal and I granted him leave to do so. I also granted him leave to amend the Statement of Claim in the manner indicated above. Costs of $1500 and $400 were awarded to the Second Defendant against the Plaintiff for the withdrawal of the appeal and the application to amend respectively. Counsel for the Second Defendant reserved his right to argue at the second Order 14 application that the Plaintiff had already made an election on the claims by entering default judgment against the First Defendant.

The Reasons

9. Since 1 December 2002, pursuant to the Rules of Court (Amendment No. 4) Rules 2002 (S 565 of 2002), an application under Order 14 may be taken out only after a Defence has been served. Before that date, such an application could be taken out as soon as the Defendant has entered an appearance in the action and, in that event, the Defence need not be served until after the determination of the Order 14 application [see the previous Order 18 rule 2 (2) which was deleted by the same amendment rules].

10. It follows that a Plaintiff cannot add a new cause of action between the hearing at first instance and the appeal therefrom and proceed on that new cause of action at the appeal (even as an alternative claim). If it were otherwise, the Defendant would be left without an answer in his Defence to the amended claim. That would defeat the purpose of the 1 December 2002 amendments to Order 14 which sought to crystallise the issues and to set the parameters for the summary judgment hearing. Indeed, if the Plaintiff could make such a material change to his claim during the journey from registry to judge, the appellate judge would be virtually hearing a fresh Order 14 application, not an appeal from the existing one.

11. This position is consonant with the decision of Chao Hick Tin J in *Techmex Far East Pte Ltd v Logicraft Products Manufacturing Pte Ltd* [1998] 1 SLR 483. There, the Plaintiffs' first application for summary judgment was dismissed and no appeal was lodged against the dismissal. The Statement of Claim was then re-amended and a second application for summary judgment was made. That application was dismissed on the ground that a second application was not permissible under Order 14. Allowing the Plaintiffs' appeal, Chao Hick Tin J said:

> "15 Initially I had thought that perhaps implicit in O 14 was the policy that a plaintiff should only have one bite at the cherry, and if he failed for whatever the reasons, the matter should go to trial. But having reviewed the matter and having regard to the real objective behind O 14, that perhaps is too narrow a perception. If an application fails because of some technical defects, not because the registrar thinks that there are factual issues to be tried, there can hardly be any estoppel as there was no determination on the merits whether there ought to be a trial. It seems to me if the factual or legal basis of a claim has been altered because of amendments to the

pleadings, there is much to commend itself, on the rationale expounded by Colman J in *Bristol & West Building Society*, namely, the efficient administration of justice, to allowing a second application. Quite clearly what would constitute a new factual or legal basis must vary from case to case. I do not think it possible or advisable to lay down any single criterion to determine that question. Lest it be thought that this might lead to the opening of a flood-gate, I wish to add this clarification. If on an application leave to defend is allowed, and no appeal is brought against that decision, a second application should not be permitted if it relates to the same claim or claims with perhaps better evidence. That would not constitute a new factual basis. The Plaintiff would have to live with his default, tendering of inadequate evidence at the first application, and should proceed to trial."

12. Leaving aside the position on appeal, where a Plaintiff amends his Statement of Claim materially (that is, by altering the factual or legal basis of the claim) after the Defendant has served his Defence, he should not take out an application under Order 14 until after the Defendant has had an opportunity to amend his Defence.

13. Where such amendments are made to a Plaintiff's Statement of Claim after an application under Order 14 has been taken out but before it has been heard at first instance, the Plaintiff should not be allowed to proceed with the Order 14 application until after the Defendant has had an opportunity to amend his Defence. If the Plaintiff's affidavit, which has to be filed at the same time as the Order 14 application [see Order 14 rule 2(2)], does not 'contain all necessary evidence in support' [see Order 14 rule 2 (8)] of the claim as amended, then the Plaintiff should not proceed with the Order 14 application. He should withdraw it and lodge a new application with the proper affidavit.

14. It is incumbent on a Plaintiff who wishes to proceed under Order 14 to get all his pleadings and evidence in order before launching an application meant to obviate a trial in open court.

Leave granted to Plaintiff to withdraw appeal
and to amend his Statement of Claim.