**IN THE GENERAL DIVISION OF**
**THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2023] SGHC 270**

Suit No 268 of 2022
(Registrar's Appeal No 181 of 2023)

Between

1. Hyflux Ltd (in compulsory liquidation)
2. Hydrochem (S) Pte Ltd (in compulsory liquidation)
16. Tuaspring Pte Ltd (under receivership)

… *Plaintiffs*

And

KPMG LLP

… *Defendant*

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# JUDGMENT

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[Civil Procedure — Pleadings — Further and better particulars]

# Hyflux Ltd (in compulsory liquidation) and others
# v
# KPMG LLP

**[2023] SGHC 270**

General Division of the High Court — Suit No 268 of 2022 (Registrar's Appeal No 181 of 2023)
Choo Han Teck J
20 September; 21 September 2023

27 September 2023 Judgment reserved.

**Choo Han Teck J:**

1 Hyflux Ltd (In Compulsory Liquidation) ("Hyflux" the first plaintiff) was, at the time of its liquidation on 21 July 2021, the holding company of Hydrochem (S) Pte Ltd (In Compulsory Liquidation) ("Hydrochem" the second plaintiff) and Tuaspring Pte Ltd (Under Receivership) ("Tuaspring" the 16th plaintiff). They are the three remaining plaintiffs in this action against KPMG LLP ("KPMG"), the sole defendant. The proceedings before me is the appeal by KPMG against the assistant registrar's refusal to order further and better particulars of four requests, namely numbers 1, 4, 5, and 6 of KPMG's list of requests for particulars. The learned assistant registrar refused the requests on the ground that they are requests for evidence, and not particulars of the cause of action.

2 I agree with the assistant registrar that the four requests are indeed requests for evidence, and this appeal is therefore dismissed. The plaintiffs endorsed the writ of summons with a variety of claims against KPMG. These include breach of contract, breach of statutory duties, misrepresentation, and negligence. All that is fine, and a plaintiff may also elect not to pursue some of the claims once the Statement of Claim is filed, but whatever the plaintiff's claim is, he must be clear. This means that the plaintiff must state precisely what causes of action he is proceeding against the defendant, and tell him what facts support that cause of action. He must then plead the breaches by the defendant, and finally, that by reason of those breaches, the plaintiff suffered loss and damage, which, he must naturally enumerate.

3 Generally, when a Statement of Claim runs for 45 pages, it is a sign that the plaintiff has pleaded excess material that is not required in the Statement of Claim. Usually, the excess material comes in the form of opinions, statements of law, and evidence. They clutter the pleadings and render the claim difficult to follow. As is the case here.

4 My point is best illustrated by reference to the table of contents (usually unnecessary) of the Statement of Claim of the plaintiffs here. It starts with an introduction of the parties and the letters of engagement, and what appears to be a list of witnesses (wholly unnecessary). Then it sets out what is described as "background facts". Up to this point, it is not clear whether the plaintiffs are suing in contract, tort, or breach of statutory duty. Then out of the blue, so to speak, we see a subject heading: "KPMG's negligence". Immediately after this comes the heading, "Causation, loss and damage". Causation is a matter of law,

and the plaintiff is only obliged to plead what damage he had suffered by reason of the defendant's wrongdoing.

5 That takes us back to the section under "KPMG's Negligence". The proper thing to plead under such a cause of action would be to state the essential facts, such as the relationship between the plaintiff and the defendant that would give rise to a duty of care. Then all he needs to do after that is to say that the defendant was negligent and provide the particulars of negligence. If the plaintiff is suing for breach of contract, he should specify the date and nature of the contract, the relevant terms, and that the defendant breached those terms by non-compliance or partial compliance. The claim, as pleaded, does not appear to be based on contract, save for the one cameo appearance which I shall point out below (at [7]).

6 Under the heading of "KPMG's Negligence", we see a list of things that the plaintiffs say a "reasonably competent auditor" would have done. The enumerated details are meandering and spattered with jargon. I will set out paragraphs 47.1 and 47.2 in full because they illustrate the point I have just made:

> 47.1 KPMG should have identified the risk of misstatement in respect of the Tuaspring project as a significant risk in relation to the Group audit. From at least 2012 onwards, the Tuaspring project accounted for a significant percentage of the Group's total assets (see particulars in the table at paragraph 23 above) and as such were highly material to the Financial Statements. The accounting for these assets relating to the Tuaspring project, and in particular the assessment for impairment, were heavily dependent on factors such as projected power prices, natural gas prices and spark spreads, which could vary based on changing circumstances. This gave rise to the risk that the assumptions relied on in the Financial Statements had failed to reflect any change in circumstances, which had the effect of disguising the deteriorating financial situation faced by the

> Group. This risk became particularly acute from around the end of 2012, as power prices, natural gas prices and spark spreads moved dramatically and deviated from the projections contained in earlier financial models and energy reports.
>
> 47.2 In light of this significant risk of misstatement, KPMG should have planned and conducted its audit work with a view to addressing this risk. In particular, KPMG should have ensured that it obtained sufficient appropriate audit evidence as to whether the inputs used by Hyflux in carrying out its DCF Analyses, including power prices, natural gas prices and spark spreads, were reasonable. Further, a reasonably competent auditor would have obtained a thorough understanding of how Hyflux's management arrived at the inputs, including by understanding the source materials relied on, the reliability of these source materials, any adjustments made to source material inputs and the reasons for those adjustments. Where Hyflux's management made representations on these matters, a reasonably competent auditor would have obtained corroborative evidence. In assessing the sufficiency of the audit evidence obtained, a reasonably competent auditor would have maintained proper professional skepticism [sic] bearing in mind the significant risk of misstatement.

7 The paragraphs that follow are more of the same, except that in paragraph 50, we suddenly meet a stranger: "breach of contract". That paragraph begins as follows:

> As a result of KPMG's deficient audits, it failed in breach of contract and duty to identify that Hyflux's Financial Statements for 2014 to 2017 should not have been prepared on a going concern basis, or at least that there were material uncertainties about Hyflux's or the Group's ability to continue as a going concern, which required disclosure in Hyflux's Financial Statements. KPMG should have realised the matters set out in C.7 above.

No contract has been pleaded, let alone the terms. I am left to assume that the contract referred to here is a reference to the three "letters of engagement" mentioned in paragraphs 12, 13, and 14; and all that was stated was that by those letters the plaintiffs "engaged KPMG to audit their financial statements for

2010" and various other years. Paragraphs 16 and 17 mention an "express term" and an "implied term" of these letters of engagement. However, a breach of these two terms is not pleaded. A breach of "a tortious duty to exercise reasonable skill and care" in the carrying out of audit work was further discussed in tandem with these two terms.

8 Still under "KPMG's Negligence", at paragraph 52, the plaintiffs plead:

> For the avoidance of doubt, for reasons of proportionality the Plaintiffs have restricted their misstatement analysis to the Tuaspring project. However, KPMG's failure to obtain reasonable assurance that Hyflux's Financial Statements were not misstated in respect of this very significant project suggests that there were systematic failures on KPMG's part to plan and perform proper audit procedures in respect of the Group's projects, and in particular, assess the reasonableness of DCF Analyses of future cash flows…

In spite of such pleadings, I think it may be discerned that the plaintiffs are suing KPMG for its failure to audit the plaintiffs' accounts competently, and thereby misleading the board of directors, creditors, and shareholders into believing that the plaintiffs were financially sound when they were not. But I may be wrong.

9 However, if I am right, then all that KPMG needs to plead in its defence is that it had discharged its duty competently in accordance with the letters of engagement. But, instead, it filed a 125-page defence. And it wants more particulars otherwise, as its counsel, Mr Thio Shen Yi SC ("Mr Thio") argued, it will not know how to plead its defence. Going through the defence, it seems clear to me that KPMG is plying its defence with evidence. The four more particulars it wants seem to be regarding assertions (of evidence) that KPMG is unsure of what evidence it wants to set out to counter them.

10 This will be clear when one reads the requests, and so I shall set them out in full:

(a) Request 1: Under Paragraph 23 of the SOC — of the averment that "The amount of the provisions and/or impairments is at least in the amounts set out in the table below", please state the full particulars of the manner (including but not limited to the formula and/or mathematical computation) in which the plaintiffs derive the figures included under "separate assessment" and "combined assessment" set out "in the table below". The plaintiffs have the burden of adducing evidence as to why the reported accounts were wrong, and what the correct accounts should be, and, of course, that KPMG ought to have known that the accounts were wrong. All that is evidence and argument.

(b) Request 4: Under paragraph 37.1 of the SOC — of the averment that, "At each reporting date for its 2011 to 2017 Financial Statements, the costs to Tuaspring of fulfilling these obligations were greater than the economic benefits it expected to receive under the Water Purchase Agreement" Please state, "The full particulars of the basis in which the plaintiffs assert that 'the costs to Tuaspring of fulfilling these obligations were greater than the economic benefits it expected to receive under the Water Purchase Agreement" at each reporting date for its 2011 to 2017 Financial Statements, including the "costs" and "economic benefits" at each reporting date of the 2011 and 2017 Financial Statements.

(c) Requests 5 and 6 are of a similar nature to Request 4, although they relate to different assets and different time periods.

11 Mr Thio called in aid the case of *Quinn Insurance Ltd (under administration) v PricewaterhouseCoopers (a firm)* [2019] IESC 13 but it is clear to me, with due respect, that the parties there fell into the same kind of pit that KPMG here found themselves, namely, that they were lured by the pleading of evidence and so felt obliged to respond in kind. This practice should not be given encouragement. At this stage of the process, clarity of the cause of action and the defence is the goal because they limit the boundaries of the trial, and provide the structure upon which subsequent interlocutory steps are built upon. For instance, the pleadings help the court to decide how much discovery is relevant and permissible, and that, in turn, limits subsequent inquiries by way of interrogatories. In this way, time taken at trial for cross-examination may be shortened.

12 The pleadings thus determine the breath and scope of discovery, and the interrogatories of discovered documents can be more meaningfully carried out. The process then enters the final phase in which the parties set out their evidence by way of affidavits. Throughout the process, clarity is the lodestar. It is the light that enables the judge to see, and that is all that matters to the court. The length of pleadings, as with most aspects of litigation, is measured by relevance and necessity. Thus, brevity is not the antithesis of meticulousness, nor is verbosity a sign of thoroughness. Further and better particulars will be furnished to the deserving of cases, when they are needed to set out the party's case clearly. Inquiries into evidence should be left to other stages of the interlocutory process. Lawyers should not pad their pleadings with reams of evidence hoping to get something by sheer volume — they would be up all night hoping to get lucky; but it does not work that way.

13 As to costs. I would prefer to leave it to the trial judge who will need all the flexibility at his disposal to determine how much cost has been reasonably incurred. I therefore order that costs here and below be reserved to the trial judge.

- Sgd -
Choo Han Teck
Judge of the High Court

Thio Shen Yi SC, Joshua Phang Shih Ern and Juliana Lake (TSMP Law Corporation) for the appellant/defendant;
Kenneth Tan SC (Kenneth Tan Partnership) (instructed), Eddee Ng Ka Luon, Leong Qianyu and Gitta Priska Adelya (Tan Kok Quan Partnership) for respondents/plaintiffs.