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

**[2017] SGHC 116**

Suit No 1338 of 2016
(Registrar's Appeal No 116 of 2017)

Between

Champion Management Pte Ltd

… *Plaintiff*

And

Kee Onn Engineering Pte Ltd

… *Defendant*

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# GROUNDS OF DECISION

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[Civil procedure] — [Pleadings] — [Rejoinder]

# Champion Management Pte Ltd
# v
# Kee Onn Engineering Pte Ltd

## [2017] SGHC 116

High Court — Suit No 1338 of 2016 (Registrar's Appeal No 116 of 2017)
Foo Chee Hock JC
16 May 2017

24 May 2017

**Foo Chee Hock JC:**

1 This registrar's appeal concerned Kee Onn Engineering Pte Ltd's ("Kee Onn") application for leave to ***file*** a rejoinder ("Proposed Rejoinder").[1] I pause here to note that leave should have been sought to ***serve***, as opposed to file, the Proposed Rejoinder: see O 18 r 4 of the Rules of Court (Cap 322, R5, 2014 Rev Ed) ("ROC"). But as the point was not taken, I move on. At the hearing below, Kee Onn's application was dismissed by the

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[1] SUM 1387/2017.

assistant registrar. Dissatisfied with the decision, Kee Onn filed the present appeal,[2] which I dismissed at the end of the hearing before me.

2 I noted that such applications did not find their way into many case files: see *Singapore Civil Procedure 2017* vol 1 (Foo Chee Hock JC gen ed) (Sweet & Maxwell, 2017) ("*Singapore Civil Procedure*") at para 18/4/1. I also observed that pleadings had of late bloated in length while withering in clarity, and rejoinders were an aspect of the problem of ensuring that issues were delineated in pleadings with efficiency and lucidity. Kee Onn's application was therefore deserving of closer examination, and I now set out the reasons for my decision.

3 The heart of the dispute, which was situated in the context of a case involving a contract for renovation works (Suit 1338 of 2016),[3] may be distilled as follows. In paragraphs 11 and 12 of its amended statement of claim, Champion Management Pte Ltd ("Champion") averred that the variation orders ("VOs") submitted by Kee Onn had not been agreed to by Champion and that Kee Onn had not carried out the alleged variation works.[4] In its defence

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2 RA 116/2017.

3 Plaintiff's WS at paras 3–11.

4 Plaintiff's WS at paras 7–8; SOC (Amendment No 1) dated

("Defence"), Kee Onn traversed these allegations and essentially took the position that the VOs had been agreed[5] and that the variation works had been completed or substantially completed.[6] Thereafter, in the reply ("Reply"), Champion pleaded two e-mails (which had appeared in the amended statement of claim) to show that the VOs had not been approved and the variation works had not commenced.[7] Kee Onn then sought leave to file the Proposed Rejoinder to respond to the Reply.[8]

4 Before me, the arguments ranged back and forth. On the one hand, Kee Onn's primary submission was that the Proposed Rejoinder would bring clarity to the salient issues at trial.[9] On the other hand, Champion essentially argued that leave should not be granted to serve the Proposed Rejoinder because it contained paragraphs that were either already in the Defence[10] or contravened the general rule that evidence should not be pleaded.[11] In the end, I

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15 Mar 2017 at paras 11–12.

5 Defence dated 13 Jan 2017 at paras 14(a) and 14(b).

6 Defence dated 13 Jan 2017 at para 14(c).

7 Reply dated 27 Jan 2017 at paras 5(3)(i) and 5(3)(ii).

8 Proposed Rejoinder at pp 10–12 of Lee Chee Seng's affidavit.

9 Defendant's WS at paras 6–18.

10 Plaintiff's WS at paras 26–34.

11 Plaintiff's WS at paras 35–42.

agreed with Champion's arguments, which I found also to be consonant with the principle that leave to serve a rejoinder should only be granted under ***exceptional*** circumstances: see *Singapore Civil Procedure* at para 18/4/1.

5 With respect to the argument that the allegations in the Proposed Rejoinder had already been pleaded, Champion referred me to *Norris v Beazley* (1877) 35 LT 845 ("*Norris*"). *Norris* was cited in *Singapore Civil Procedure* at para 18/4/1 for the proposition that leave to serve a rejoinder would only be granted if it was "***really required*** to raise matters which must be specifically pleaded" [emphasis added]. The corollary of this proposition was that a rejoinder must not be a mere repetition of what had already been pleaded. Denman J elucidated in *Norris* as follows (at p 846):

> I hold that [the rejoinder in *Norris*] would be ***objectionable as a repetition.*** … I now think that the statement of defence and counter-claim between them ***included all the matter now sought to be amplified by means of the rejoinder.*** … Pleadings should be ***as short as they reasonably can be***, provided they raise the points in issue between the parties …
>
> [emphasis added]

6 I agreed with the above passage, which applied squarely to the relevant paragraphs in the Defence and the Proposed Rejoinder. I set them out in the following table for comparison (with emphasis added):[12]

| Defence | Proposed Rejoinder |
|---|---|
| 14. Paragraph 12 of the Plaintiff's Statement of Claim is denied. The Plaintiffs have agreed and are bound by the VOs. | 2. The Defendants aver with regard to Paragraph 5 of the said Reply that:- |
| 14 (a) The Plaintiffs ***agreed to have additional works done as described in the VOs*** through conduct as they had been working with the Defendants well beyond the dates alleged to be completion dates by the Plaintiff and accepted the delivery of the VO works.<br><br>**Defence** | 2 (a) The Plaintiffs ***had indeed approved the Variation Orders ("VOs") and agreed to have additional works done*** as described in the VOs 1, 2, 3, and 4.<br><br>**Proposed Rejoinder** |
| 14 (b) The Plaintiffs ***agreed to essential terms of the VOs, in particular the*** | |

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[12] Plaintiff's WS at Annex B; NE (16 May 2017) at p 1.

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|---|---|
| ***scope of the VOs*** as required under Clause 1 of the Terms and Conditions. | |
| 14 (c) The Defendants ***had completed, or in the alternative, substantially completed the additional works as described in the VOs***. | 2 (b) The Defendants ***commenced the works as described in the VOs*** 1, 2, 3, and 4.<br>2 (c) The works as described in VOs 1, 2, 3, and 4 were ***completed, or in the alternative, substantially completed*** by the Defendants on or before 10th May 2016. |

7 As made clear from the table above, the cited paragraphs from the Proposed Rejoinder were ringing echoes of the Defence. Therefore, as far as paragraphs 2(a), (b) and (c) of the Proposed Rejoinder were concerned, it was apparent that a rejoinder was unnecessary. Although the Proposed Rejoinder specified the precise VOs in issue (*ie*, VOs 1, 2, 3 and 4), this was merely an ***amplification*** of the Defence. I was also of the view that the word "commenced" in paragraph 2(b) of the Proposed Rejoinder added

nothing of substance. It could not be seriously disputed that variation works could only be completed or substantially completed if Kee Onn had commenced them.

8 As noted by the Court of Appeal in *Yeow Chern Lean v Neo Kok Eng and another* [2009] 3 SLR(R) 1131 at [34], there must be "finality in the pleading process" and "an end at some stage". Therefore, matters raised in a rejoinder must be "necessary response[s]" to a reply (at [35]). Here, the substance of the dispute had already been pleaded in the Defence. Also, by way of implied joinder of issue under O 18 r 14(2)(*a*) of the ROC, Kee Onn was not prejudiced, and not precluded from proving the facts in paragraphs 2(a), (b) and (c) of the Proposed Rejoinder even in the absence of these paragraphs.

9 In my view, the redundancy of paragraphs 2(a), (b) and (c) of the Proposed Rejoinder was too clear for any argument, and it appeared that counsel for Kee Onn was at her wits' end, and had to recognise this.[13] Certainly, at the hearing before the assistant registrar, Kee Onn conceded that paragraphs 2(a), (b) and (c) of the Proposed Rejoinder had already been covered in the other pleadings.[14] Similarly, at the hearing before me, Kee Onn stated

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13 NE (16 May 2017) at p 2.

14 NE before AR (12 Apr 2017) at p 2.

that it was "prepared to drop everything" except for paragraphs 2(d) and (e) of the Proposed Rejoinder.[15]

10 I therefore turn now to address these two paragraphs, along with paragraphs (i) and (ii) under the "Particulars" of the Proposed Rejoinder. These paragraphs are set out as follows:

> (d) The ***e-mails of 19th May 2016 from LAANK to the Plaintiffs and of 24th May 2016 from the Defendants to the Plaintiffs*** [as referenced in the Reply] pertained largely to VO 5 only, not of all the earlier VOs 1, 2, 3, and 4.
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> (e) Hence, the Plaintiffs' reliance on the discussion of the works for VO 5 (which is not the subject of the current claim) is irrelevant.
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> …
>
> PARTICULARS
>
> (i) The Defendants had completed, or in the alternative substantially completed the works as described in VOs 1, 2, 3, and 4, and issued the ***four corresponding VO Proforma Invoices (No. 3469/1, 3469/2, 3473/1, and 3494/1) in their e-mail to the Plaintiffs' Jace Lee on 10th May 2016*** for the Plaintiffs' immediate payment.
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> (ii) The Defendants will refer to the ***e-mail of 10th May 2016*** and the Defendants will rely on the said e-mail for its full terms and effect at the trial of this action herein.
>
> [emphasis added]

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15 NE (16 May 2017) at p 2.

11 Citing *Sharikat Logistics Pte Ltd v Ong Boon Chuan and others* [2011] SGHC 196, Champion argued that the above paragraphs should not be pleaded because they raise evidence concerning some e-mails and "Proforma Invoices".[16] I agreed with Champion. As O 18 r 7(1) of the ROC mandated, pleadings must only contain facts and "not the evidence by which those facts are to be proved". I was therefore not impressed by Kee Onn's argument that these were "new, material facts"[17] necessitating a rejoinder. And even if such evidence could be pleaded, it was unnecessary (as was the case for paragraphs 2(a), (b) and (c) of the Proposed Rejoinder) for Kee Onn to do so. As counsel for Champion candidly stated, "Kee Onn is not estopped from proving what they had just said in the Rejoinder (para 2(d) and (e)) even if there is no Rejoinder",[18] presumably because there was an implied joinder of issue.[19]

12 In the light of the above, it was clear that Kee Onn's application for leave to file the Proposed Rejoinder was correctly refused by the assistant registrar. As an aside, I observed that the Reply might itself be deficient. For one, it might be said that the

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16 Plaintiff's WS at paras 38–42.

17 Defendant's WS at para 18.

18 NE (16 May 2017) at p 2.

19 Plaintiff's WS at para 40.

e-mails referenced in the Reply constituted evidence (see above at [3]). When pressed on this point, counsel for Champion submitted that Champion did not require leave to serve a reply.[20] I did not find this answer to be entirely satisfactory. But given that I was not hearing an application to impugn the correctness of the Reply, I make no further comments on this point nor do I prejudge any issue vis-à-vis the Reply should Kee Onn decide to challenge it.

13 Accordingly, I dismissed Kee Onn's appeal with costs fixed at $2,000 (all-in) to be paid by Kee Onn to Champion.

Foo Chee Hock
Judicial Commissioner

Ang Ann Liang and Ong Chin Kiat (Allen & Gledhill LLP)
for the plaintiff;
Carolyn Tan Beng Hui and Au Thye Chuen (Tan & Au LLP)
for the defendant.

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[20] NE (16 May 2017) at p 2.