Changhe International Investments Pte Ltd (formerly known as Druidstone Pte Ltd) v Dexia BIL Asia Singapore Ltd (formerly known as Banque Internationale A Luxembourg BIL (Asia) Ltd)
[2005] SGCA 30

Case Number : CA 119/2004

Decision Date : 31 May 2005

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Judith Prakash J

Counsel Name(s) : Leslie Yeo Choon Hsien (Leslie Yeo and Associates) for the appellant; Sarjit Singh Gill SC and Seah Yi-Lein (Shook Lin and Bok) for the respondent

Parties : Changhe International Investments Pte Ltd (formerly known as Druidstone Pte Ltd) — Dexia BIL Asia Singapore Ltd (formerly known as Banque Internationale A Luxembourg BIL (Asia) Ltd)

Civil Procedure – Striking out – Appellant's first action against respondent dismissed for failure to comply with peremptory order – Appellant subsequently commencing second action against respondent – Whether appellant's failure to adequately explain non-compliance with peremptory order in first action amounting to contumelious conduct – Whether trial judge correct in dismissing appellant's second action for abuse of process of court

31 May 2005 *Judgment reserved*

Judith Prakash J (delivering the judgment of the court):

Introduction

1 In December 1999, Changhe International Investments Pte Ltd ("Changhe") sued Banque Internationale A Luxembourg BIL (Asia) Ltd (now called Dexia BIL Asia Singapore Limited) ("Dexia") for the return of US$10m that Changhe had deposited with Dexia, and that Changhe alleged Dexia had wrongfully paid out to a third party. This suit, High Court Suit No 1725 of 1999 ("Suit 1725"), was dismissed on 8 March 2000 on the ground that Changhe had failed to comply with a peremptory order of court.

2 In January 2004, Changhe and another plaintiff started an action in the High Court against Dexia and two other defendants (Suit No 63 of 2004, referred to herein as "the second action"). In so far as Dexia was concerned, the cause of action was the same as that in Suit 1725. Shortly after being served with the Writ, Dexia applied for the Statement of Claim in the second action to be struck out on the ground that it was an abuse of process of the court. Dexia failed in its application before the assistant registrar. It appealed and Justice Tan Lee Meng allowed the appeal and struck out the Statement of Claim (see [2005] 1 SLR 598). Changhe has now appealed to this court.

The decision below

3 Tan J decided the case on the basis that he had to determine whether there had been an abuse of process of the court when Changhe resurrected Suit 1725 in the form of the second action. Applying the case of *Janov v Morris* [1981] 1 WLR 1389, he noted that it was a matter of discretion whether the second action should be struck out. He also noted that the court should be cautious in allowing the second action to continue, and should have due regard to the necessity of maintaining the principle that orders are made to be complied with and not ignored. Tan J observed that if an

appeal had been lodged against the dismissal of Suit 1725, Changhe would have had to explain its failure to comply with the peremptory order in question and commented "[n]o lower standard can be expected if a litigant chooses not to appeal but to start a fresh action several years down the road" (at [11] of his judgment).

4 The judge considered that neither in Suit 1725 nor in the second action had Changhe offered any satisfactory explanation for the failure to comply with the peremptory order. In the second action, Changhe had sought an adjournment before the assistant registrar for the purpose of filing an affidavit to explain its actions in Suit 1725. However, it failed to file the said affidavit before 20 September 2004, the deadline fixed by an order of court dated 30 August 2004. It subsequently relied on an affidavit filed three years earlier on behalf of Changhe during proceedings relating to Suit 1725. That affidavit did not offer any satisfactory explanation for the non-compliance with the court order.

5 Tan J held that Changhe's lack of diligence in complying with court orders in the first suit was equally evident in the second action, and to allow Changhe to proceed with the second action would be to condone a blatant disregard of orders of court. Accordingly, he allowed Dexia's appeal with costs.

The law

6 Since the 1980s, it has been settled law that the court has the discretion to strike out an action as an abuse of process of the court where there had been a failure by a litigant to comply with a peremptory order of the court in a previous action. Before the English Court of Appeal decision in *Janov v Morris*, due to *obiter dicta* in *Birkett v James* [1978] AC 297 at 334, it had been doubted that a person who started an action within the limitation period was liable to have it struck out as constituting an abuse of the process of the court for the sole reason that a previous suit instituted by him in respect of the same cause of action was itself struck out on the ground that his disobedience to the court's orders amounted to contumelious default: *Tolley v Morris* [1979] 1 WLR 592 at 604, *per* Lord Edmund-Davies. His lordship expressed the view (albeit *obiter*) that even in such circumstances, a plaintiff who had not been declared a vexatious litigant could, within the limitation period, prosecute to trial a fresh action, but stated that he regarded such a conclusion as unfortunate.

7 This question came up for direct decision in *Janov v Morris* (*supra* [3]). The plaintiff in that case had issued a writ in 1978 claiming damages for breach of contract. The defendant delivered particulars of defence and counterclaim, and then no further step was taken in the action for a period of ten months. On the defendant's application to strike out the action for want of prosecution, the master ordered that the action would be struck out unless the plaintiff served his summons for directions by a specified date. The plaintiff failed to comply with the order or to offer any explanation for his delay in prosecuting the action. In July 1980, the master gave judgment on the claim for the defendant. In September 1980, the plaintiff issued a second writ pleading the same cause of action. The defendant was successful in an application to strike out the second action as an abuse of the process of the court. The plaintiff appealed. The judge accepted the plaintiff's contention that he was entitled to bring a second action at any time within the limitation period, notwithstanding that his original action had been struck out for failure to comply with a peremptory order of the court, and rescinded the striking out.

8 The defendant's further appeal to the Court of Appeal was successful. In allowing the appeal, Dunn LJ referred to the statements made by Lord Edmund-Davies in *Tolley v Morris* and said at 1394:

> [O]ne can well understand his Lordship's opinion that the conclusion which he preferred would be a highly unfortunate one, because it was conceded by counsel for the plaintiff that if it were right, a litigant could disobey and disregard orders of the court, have his action struck out, and provided he was within the limitation period, he could immediately start another action; and even if another peremptory order was made in the second action and that action dismissed, then if the logic of *Birkett* v. *James* [1978] A.C. 297 is taken to its ultimate, he could start a third or any number of actions provided they were within the limitation period and none would be regarded as an abuse of the process of the court.

Dunn LJ then stated he would decide the question according to principle. He referred, first, to *Samuels v Linzi Dresses Ltd* [1981] QB 115, an earlier Court of Appeal decision, which considered an analogous though dissimilar situation. In that case, a peremptory order had not been complied with and the issue was how the court should exercise its power to extend time to comply with the order. Roskill LJ had expressed the view (at 126) that this power "should be exercised cautiously and with due regard to the necessity for maintaining the principle that orders are made to be complied with and not to be ignored". Dunn LJ applied those words by analogy to the situation where a peremptory order had been made and not complied with, and the action had been struck out and the second action started. In his view, "the court should be cautious in allowing the second action to continue and should have due regard to the necessity of maintaining the principle that orders are made to be complied with and not to be ignored" (at 1395). He therefore held that, in the absence of any explanation as to why the order had not been complied with in the previous action or of any assurance as to the conduct of the present litigation, the present litigation had to be struck out.

9 Watkins LJ agreed with Dunn LJ. He said (at 1395):

> A prospective litigant must be deemed to know that upon taking out a writ endorsed with a claim for monetary or other relief, his conduct of the action thereby brought into being will be governed thereafter by rules and orders of the court. A failure to conform to any one of these may cause him to be penalised even to the extent of having his action struck out.
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> In the event of his action being ordered to be struck out for failure to obey a peremptory order, he may appeal against that order seeking, if necessary, an extension of time within which to do so. The outcome of such an appeal will to some extent depend upon the excuse for failure preferably set forth in affidavit form provided for the court's consideration. If a litigant neglects to avail himself of that procedure and brings a fresh but precisely similar action to that ordered to be struck out without any explanation then or at any later time for a failure to obey the peremptory order, he should not be surprised that the commencement of the second action is found to be an abuse of the process of the court and for that reason it, too, is struck out.
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> To behave in such a way is in my judgment to treat the court with intolerable contumely.

1 0 *Janov v Morris* and *Samuels v Linzi Dresses Ltd* have stood as good law for more than 20 years. The latter case has been cited and followed in several decisions in Singapore and, in particular, by this court in *Syed Mohamed Abdul Muthaliff v Arjan Bhisham Chotrani* [1999] 1 SLR 750 ("the *Syed Mohamed* case") where this court held that in cases in which it had to decide what were to be the consequences of a failure to comply with an unless order, the relevant question was whether such failure was intentional and contumelious. The court should not be astute to find excuses for such failure since obedience to orders of the court was the foundation on which its authority rested. The crux of the matter was that the party seeking to escape the consequences of his default would have to show that the failure was not contumelious because he had made positive efforts to comply but was prevented from doing so by extraneous circumstances, and that he had no intention of ignoring

or flouting the order.

11 Thus, it is established law that where a litigant, whose first action has been struck out for failure to comply with a peremptory order, brings a second suit based on the same cause of action, that second suit may be struck out as being an abuse of the process of the court unless the litigant can give a proper explanation to establish that his failure to comply with the peremptory order was not contumelious. It should be noted that *Tolley v Morris* also stands for the principle that disobedience to a peremptory order would generally amount to contumelious conduct.

12 Further, the courts have consistently taken the position that even where the contumelious conduct is that of the litigant's solicitor rather than that of the litigant himself, the litigant has to bear the consequences of such contumely. In *Hytec Information Systems Ltd v Coventry City Council* [1997] 1 WLR 1666 at 1675–1676, Ward LJ explained the rationale for visiting the sins of the solicitor on his client as follows:

> Ordinarily, this court should not distinguish between the litigant himself and his advisers. There are good reasons why this court should not: first if anyone is to suffer for the failure of the solicitor it is better that it be the client than another party to the litigation; secondly, the disgruntled client may in appropriate cases have his remedies in damages or in respect of the wasted costs; thirdly, it seems to me that it would become a charter for the incompetent … were this court to allow almost impossible investigations in apportioning blame between solicitor and counsel on the one hand, or between themselves and their client on the other. The basis of the rule is that orders of the court must be observed and the court is entitled to expect that its officers and counsel who appear before it are more observant of that duty even than the litigant himself.

The facts

13 To decide whether there has been an abuse of process and whether the appellant has discharged the burden of establishing that it has not treated the court with intolerable contumely, it is necessary to examine, in some detail, the history of both sets of proceedings.

Events in 2000

14 Suit 1725 was commenced in December 1999 and Dexia was duly served. It entered appearance, and filed its Defence on 12 January 2000. A pre-trial conference convened by the Registrar of the Supreme Court was held on 31 January 2000. At that hearing, the parties were directed to exchange their respective lists of documents by 14 February and Changhe was directed to file its Summons for Directions by 21 February.

15 On 21 February, an order was made, on the application of Dexia, that Changhe provide certain further and better particulars of its Statement of Claim within ten days from the date of the order, failing which Dexia would be at liberty to apply for an unless order. It should be noted that Changhe did not file the particulars within the specified ten-day period or at any time thereafter.

16 A second pre-trial conference was held on 24 February. Neither party had, by that date, furnished the other with its list of documents nor given discovery in any form. Changhe's solicitors informed the Registrar that Changhe was in the process of preparing its application for summary judgment against Dexia. The Registrar then made the following orders:

(a) The parties were to exchange their respective lists of documents by 2 March.

(b) Changhe was to file its Summons for Directions by 9 March and the same was to be fixed for hearing on 13 March.

(c) If Changhe did not comply with the orders, the action would be dismissed with costs and if Dexia did not comply with the order for discovery, its Defence would be struck out and judgment entered for Changhe with costs ("the unless order").

17 Dexia filed and served its list of documents on 2 March but Changhe failed to do likewise. On 7 March, Dexia applied for an order dismissing Suit 1725 in view of Changhe's failure to comply with the unless order. This application was heard the next day by an assistant registrar. Changhe's counsel attended and made submissions on its behalf but was unsuccessful. Changhe's claim was dismissed with costs ("the dismissal order").

18 Changhe then changed solicitors. Three months later, it applied by way of a Summons for Further Directions for an order setting aside the dismissal order. This application was supported by an affidavit affirmed by a director of Changhe, one Mr Victor Boey, which purported to explain why Changhe had not complied with the unless order. We will deal with the contents of this affidavit in further detail later.

19 Changhe's application was heard by an assistant registrar on 14 June. It was dismissed on the basis that the registrar had no jurisdiction to set aside an order made by another registrar of coordinate jurisdiction. Changhe appealed against that decision to a judge in chambers. That appeal came on for hearing before Amarjeet Singh JC in July 2000 and was dismissed. Changhe then filed an appeal to the Court of Appeal. The appeal was heard and dismissed on 18 January 2001. Then all was quiet for three years.

Subsequent events

20 On 20 January 2004, a few weeks before its claim would have been time-barred, Changhe filed the second action. By this time, Changhe was represented by a third set of solicitors. Changhe's claim in the second action, apart from the inclusion of the second plaintiff and the second and third defendants, is identical to Suit 1725. The second and third defendants were not served with the Writ in the second action within the validity period of the Writ. The Writ has thus expired as against them and now the second action stands as a suit against Dexia only.

21 The Writ was served on Dexia on 17 July 2004. It entered appearance and, shortly afterwards, filed its application to strike out the Statement of Claim in the second action as an abuse of process. This application was fixed for hearing on 30 August 2004 before a senior assistant registrar. At the hearing, Changhe applied for an extension of time of three weeks in which to file an affidavit in response. It was given up to 20 September 2004 to file this affidavit. No affidavit was, however, filed. Instead, at the adjourned hearing of the application on 11 October 2004, Changhe produced, and sought to rely on, the affidavit of Victor Boey filed on 9 June 2000 in Suit 1725. As stated earlier, Changhe successfully resisted the application and the matter then went on appeal before Tan J who reversed the senior assistant registrar's decision.

Victor Boey's affidavit

22 Victor Boey affirmed that he had been employed as a director of Changhe since 6 August 1999. He said that he had no personal knowledge of the transactions that gave rise to the claim in Suit 1725. The officer handling the transaction had been one Mr Yang Yun who was a Chinese national residing at Shang Qingsu Yushong Chong City, China. Mr Boey deposed to the contents of

the affidavit on the basis of knowledge derived from information contained in the papers and records of Changhe and also provided to him by Mr Yang.

23 On behalf of Changhe, Mr Boey apologised to the court for its failure to comply with the unless order. He emphasised that Changhe did not intentionally violate the unless order. Changhe believed that it had a meritorious claim against Dexia and wanted the case to be proceeded with without delay. As such, it was inconceivable that Changhe would jeopardise its case by deliberately acting in breach of the unless order. He asserted that "in truth" Changhe was not aware of the unless order made on 24 February 2000. It was not aware of, and was not informed about, the striking-out application heard on 8 March 2000. Changhe only realised that its action had been dismissed on or about 29 March 2000 when it inspected the cause paper file of its previous solicitors in the course of transferring the matter to its present solicitors.

24 Mr Boey asked the court to take notice that the unless order was not conveyed to Changhe by its solicitors and the breach of the unless order was therefore due to extraneous circumstances beyond Changhe's knowledge and control. At the material time, Changhe had only been informed by its previous solicitors of Dexia's application for further and better particulars that was fixed for hearing on 21 February 2000. On 22 February 2000, Changhe had instructed its previous solicitors to apply to the immigration department for arrangements to be made for Changhe's Chinese directors to travel to Singapore in order to provide detailed instructions in respect of Suit 1725.

25 Mr Boey exhibited copies of correspondence to the immigration authorities that showed that Changhe had applied for permission for three officers, namely Mr Yang, Mr Wang Ping and one Mr Yu Wen Kai, to be granted visas to visit Singapore. These men were the officers of Changhe who were privy to the matters that arose out of the claim; especially Mr Yang Yun who had intimate knowledge of the events that transpired between Changhe and Dexia. Although the immigration authority had been informed that the application was urgent and that Changhe had a tight schedule to meet, the Controller of Immigration only reverted to Changhe's previous solicitors on 6 March 2000. Mr Boey averred that even if Changhe had been duly informed by its previous solicitors of the unless order, as the immigration applications had been approved on 6 March 2000, Changhe would still have exceeded the deadline for discovery stipulated by the unless order.

26 Mr Boey also asserted that Changhe's failure to comply with the unless order was beyond its knowledge and control and did not amount to a wanton disregard of the rules of the court. Changhe had clearly intended to prepare itself for the court proceedings and to comply with any directions which the court might make. That was why it had taken the initiative of arranging for the Chinese officers to come to Singapore. He further stated that Changhe was, at the date of his affidavit, able to comply with the unless order and he attached to his affidavit a copy of the list of documents together with the affidavit verifying the list which would be filed and exchanged if the court set aside the dismissal order.

Our decision

27 Thus, the question for decision before us is whether Changhe has discharged its burden of establishing that its disobedience in respect of the unless order made in Suit 1725 was not contumelious in that it was not intentional and arose from an extraneous circumstance over which Changhe had no control. Having given careful consideration to the facts before us, it is our judgment that Changhe has not discharged that burden as it did not adequately explain how what happened was not its fault.

28 It is in our view significant that Changhe did not, despite having asked for time to do so, file

a fresh affidavit from someone with full knowledge of the action and of the interaction between Changhe and its first set of solicitors in Suit 1725, to explain why the unless order was not and could not have been obeyed. The affidavit that Changhe chose to rely on was made by a person who had no personal knowledge of what had occurred and therefore deposed to hearsay. Further, Mr Boey appears to have had no personal involvement in the conduct of Suit 1725 although he was resident in Singapore at all material times between December 1999 and April 2000. Whilst he might not have known the facts of the case, he could still have acted as a go-between for the solicitors and the Chinese officers. Mr Boey, however, did not assert that he had given instructions to the solicitors or that he had received advice from them on behalf of Changhe. The impression given by his affidavit (since he did not say who gave instructions to the solicitors) was that the litigation was driven by the Chinese officers, in particular Mr Yang. There was no explanation as to why this had to be so, nor was there any evidence of the advice given to Changhe by the solicitors with regards to the conduct of the proceedings. It was also not explained why, with modern communications, the unless order and the order for further and better particulars that preceded it could not have been complied with, notwithstanding Mr Yang's physical absence from Singapore. Nor was anything at all said about the order to furnish further and better particulars and why it had not been obeyed. There was not even a hint in the affidavit that Changhe intended to obey it in the future. Changhe had to show that it had made positive steps to comply with the peremptory order. It did not do so. The judge found Mr Boey's affidavit wholly inadequate to establish that Changhe itself had not been contumelious. We agree with this view.

29 It was not enough to blame the solicitors. Changhe had to explain why it did not have someone on the ground to follow up on the progress of the action with the solicitors and ensure that all necessary steps were taken within the timelines provided by the Rules of Court (Cap 322, R 5, 2004 Rev Ed) ("the Rules") and the court's orders. It did not do so. Further, Changhe did not explain why its solicitors had not asked for an extension of time within which to file the list of documents or why it had taken two months from its discovery of the dismissal order to take steps to try to rectify the position and put Suit 1725 back on track. Even more interestingly, Changhe did not explain why a lapse of three years had occurred between the time its appeal to the Court of Appeal in relation to Suit 1725 had been dismissed and the time it filed the second action. As mentioned earlier, Changhe not only had to establish that its action in Suit 1725 had not been contumelious, it also had to show that no further disobedience of court orders would occur. Changhe's failure to explain various matters that would bear on its sincerity in pursuing the second action did not inspire confidence that if the second action were allowed to proceed, the orders of the court would be promptly complied with.

30 Apart from addressing the main issue, Changhe made certain additional submissions that we can deal with briefly. First, it sought to rely on the observation of Choo Han Teck JC (as he then was) in *Sushma Pte Ltd v FNT Singapore Pte Ltd* [1996] SGHC 258 at [14] that "[w]here the claim is not time-barred a plaintiff may commence a fresh action if his claim was struck out on account of [a breach of an unless order]". This observation does not assist Changhe as it was made by Choo JC when comparing the consequences of a breach of an unless order on a plaintiff with those faced by a defendant. His point was that if a plaintiff's claim was struck out as a result of the breach, the plaintiff could still commence a fresh action if the claim was not time-barred, whereas in the case of the defendant, his case was lost for good. Therefore, the strength of the defence could be considered in the context of whether greater injustice might be caused if the defence was struck out. Choo JC was not addressing the issue of when a fresh action commenced by a plaintiff whose first action had been struck out should be allowed to continue.

31 Secondly, Changhe submitted that we should consider the circumstances leading to the making of the unless order in Suit 1725. It argued that the unless order did not come about as a result of a series of intentional breaches of orders but was made for housekeeping reasons after both

parties had failed to file their lists of documents. Basically, what Changhe was contending was that we should review the correctness of the decision to make the unless order. We do not agree. In the *Syed Mohamed* case, this court made it clear that it was not concerned with whether or not the unless order there should have been made but rather with why it had not been complied with.

32 The circumstances leading to the making of the unless order can, however, be relevant to a certain extent. This is because it was also observed in the *Syed Mohamed* case that the lack of a history of procedural defaults on the part of the appellants would make it easier for them to show that their default in complying with the unless order was not intentional and contumelious. Therefore, in the present instance, whether the unless order was made as a result of a series of breaches of orders by Changhe would be a relevant consideration for us when deciding if Changhe had behaved in a contumelious manner. Unfortunately, a consideration of Changhe's behaviour in Suit 1725 for that purpose does not help it. Prior to the making of the unless order, there was a short but instructive history of procedural default on its part. On 31 January 2000, two orders were made that Changhe had to comply with. Neither was complied with within time. This led to the making of the unless order on 24 February 2000. On 21 February 2000, Changhe was ordered to file further particulars. It did not comply with that order within time either. Thus, up to the time that Suit 1725 was struck out for Changhe's failure to comply with the unless order, it had not complied with any of the orders of court that had been made against it.

33 The third additional submission that Changhe made related to the Summons for Directions. Changhe argued that when the unless order was made on 24 February 2000, it had not even filed the Summons for Directions. This had only to be filed by 9 March 2000, by which time the deadline for the filing of the list of documents would have already lapsed. It contended that as the Rules provide for the filing of the list of documents to be dealt with under the Summons for Directions, the fact that that summons was not even due for filing by the time the list of documents had to be delivered created an anomalous situation. Therefore, it could not be said that the failure to file and serve the list of documents at such earlier stage was contumelious conduct on its part.

34 As we have stated, and as the authorities make clear, when considering whether the conduct of a party in failing to comply with a peremptory order has been contumelious, the court's main concern is why such order had not been complied with. Accordingly, in this case, the fact that the due date for filing the Summons for Directions had not yet fallen cannot be a factor for the court to take into account in determining whether the second action should be struck out. Whether or not the second action should be struck out depends entirely on the explanation for Changhe's conduct in Suit 1725 and its assurance to the court that its conduct in that suit would not be repeated in the present suit. Whilst it is true that the summons for directions stage usually occurs before discovery, it is not essential that the summons for directions must precede discovery. The purpose of the summons for directions is to review the case as a whole to determine what further steps are necessary to make the matter ready for trial. In fact, in *Singapore Court Practice 2003* (LexisNexis, 2003), Professor Jeffrey Pinsler has expressed the view (at p 801, para 25/1/1) that the summons for directions stage occurs "appropriately, after the pleadings are closed, and, ideally, after discovery has taken place". In his view, this is important because "the court can only be in an effective position to make orders and give directions as to the future conduct of the case if the issues in dispute, revealed by the pleadings and the documents, are clear". Thus, there is no anomaly created by ordering discovery before the filing of the summons for directions.

35 The next point made by Changhe related to O 34A r 1(1) of the Rules. This rule, instituted to provide for the holding of pre-trial conferences, provides that the court has power to make orders and give directions for the just, expeditious and economical disposal of the cause or matter. Changhe argued that the striking out of such a large claim solely on the ground of its inability to file and serve

the list of documents at such an early stage of the proceedings, could not be a "just, expeditious and economical disposal" of the action.

36 In response to this point, Dexia pointed out that the English Court of Appeal in *Caribbean General Insurance Ltd v Frizzell Insurance Brokers Ltd* [1994] 2 Lloyd's Rep 32, in deciding the issue of whether a judgment should have been entered in default of compliance with a peremptory order, held that the fact that the plaintiff's claim was sizeable was immaterial. In that case, the court decided that the persistent breach of peremptory orders of the court would result in striking-out irrespective of the size of the claim. We respectfully agree. We also note that O 34A r 1(2) itself provides that the court may dismiss the action if the party has failed to comply with an order made or direction given by the court under r 1(1).

37 Finally, Changhe submitted that the judge below had erred in taking into account its decision not to proceed, or its inability to proceed, against the second and third defendants named in the Writ. Having studied the judgment, we think there is no basis for this submission. Tan J did not take this point into consideration in striking out the Statement of Claim in the second action. Tan J had considered Changhe's decision not to proceed against the second and third defendants only when he framed the issue as to whether there was an abuse of process of the court when Changhe resurrected Suit 1725 in the form of the second action. In our view, Tan J's approach cannot be faulted. He correctly applied the general principles laid down in *Janov v Morris* and did not take any irrelevant factors into account when he exercised his discretion to strike out Changhe's Statement of Claim.

Conclusion

38 In the result, this appeal fails and must be dismissed with costs. The security deposit shall be released to Dexia's solicitors to account of the costs of the appeal.