Sunny Daisy Ltd v WBG Network (Singapore) Pte Ltd
[2008] SGHC 112

Case Number : Suit 470/2005, SUM 4966/2007, 5135/2007

Decision Date : 15 July 2008

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : L Kuppanchetti and Christopher Buay (Alban Tay Mahtani & De Silva LLP) for the plaintiff; Kelvin Tan (Gabriel Law Corporation) for the defendant

Parties : Sunny Daisy Ltd — WBG Network (Singapore) Pte Ltd

Civil Procedure – Amendments – Jurisdiction – Administrative error in writ – Whether court of co-ordinate jurisdiction may set aside judgment pursuant to challenge to status of that judgment – Whether leave to amend writ should be granted

15 July 2008

Judith Prakash J:

Introduction

1 These grounds concern two related applications. The plaintiff, Sunny Daisy Limited ("Sunny"), brought Summons No. 4966 of 2007 to amend its Writ of Summons by correcting what its described as an error with regards to the place of incorporation of Sunny stated on the cover page of the Writ of Summons. The defendant, WBG Network (Singapore) Pte Ltd ("WBG") brought Summons No. 5135 of 2007 to set aside the judgment that the plaintiff had obtained before me on 17 March 2006. That decision was subsequently affirmed on appeal before the Court of Appeal in Civil Appeal No. 43 of 2006 on 23 November 2006.

2 I allowed Sunny's application and dismissed WBG's. WBG has appealed against my order relating to the amendment. It has not appealed the order I made on the setting aside application but these grounds set out my reasons for both decisions.

Background

3 As the background to the applications was rather involved, it would be helpful to set out some of the key events which preceded them. Sunny is a corporation which carries on business as a wholesaler of health supplements while WBG runs a business of retailing health related products through a multi-level marketing scheme. From May 2003 to 6 September 2004, Sunny supplied and invoiced WBG for goods sold and delivered. WBG made various payments for the goods provided by Sunny. With the passage of time, however, WBG accumulated an outstanding debt of US$1,057,164.03("the initial sum") and Sunny therefore commenced legal proceedings in Singapore in July 2005 to recover the initial sum.

4 Sunny made an application for summary judgment. WBG was granted conditional leave to defend. Sunny then appealed. I heard the appeal on 17 March 2006. Before me, although WBG did not dispute receiving the goods, it put forward a three-pronged defence to Sunny's action: first, that Sunny was no more than an agent for a third party, Internation Chlorella Co Ltd("Internation"), and as such, was not the relevant party to claim the moneys due since the appropriate plaintiff should have

been Internation; second, that the quantum claimed by Sunny was excessive; and third, that the goods supplied by Sunny were not of merchantable quality and/or not reasonably fit for the purpose for which they were intended. WBG lodged a counterclaim claiming damages on the basis of the third allegation.

5 My decision can be stated briefly. In relation to the substantive merits of the case, given that Sunny had applied for summary judgment for a smaller amount that was not disputed rather than the initial sum allegedly owed, the defence that the sum claimed was excessive was no longer tenable and failed. In relation to the identity of the creditor, I was of the view that it was difficult for WBG to suggest it was not indebted to Sunny given its inability to precisely identify the seller of the goods as well as its changing positions on this point during the course of the matter. I found that Sunny was the supplier and the proper plaintiff. I granted Sunny summary judgment in respect of the claimed sum with interest but stayed the execution of the said judgment pending the outcome of the counterclaim.

6 WBG, being dissatisfied with my decision, appealed to the Court of Appeal. On 23 November 2006, the Court of Appeal dismissed its appeal.

7 Proceedings in relation to the counterclaim continued. Eventually it was fixed for hearing on 28 January 2008.

8 In the meantime, there was an odd twist. On 9 October 2007, counsel for WBG ("GLC") wrote to counsel for Sunny ("ATM") requesting Sunny's registration documents as they had not been able "to find a registered company bearing the name" of Sunny "as part of their normal search procedure". Around two weeks later, having not heard from ATM, GLC repeated their request for Sunny's registration documents. On 24 October 2007, ATM forwarded a copy of Sunny's Certificate of Incorporation No. 492640. The Certificate stated *inter alia*, the following:

> The Registrar of Companies of the British Virgin Islands HEREBY CERTIFIES pursuant to the International Business Companies Act Cap. 291 that all the requirements of the Act in respect of incorporation having been satisfied, SUNNY DAISY LIMITED is incorporated in the **British Virgin Islands** as an International Business Company this 22nd day of April, 2002.
>
> [emphasis in bold added]

On 31 October 2007, GLC wrote to ATM, citing an apparent discrepancy in the Writ of Summons, which had stated the place of incorporation as Taiwan.

9 I should point out here that in the body of the writ the name of the plaintiff was written as "Sunny Daisy Limited (Foreign Reg No 492640)". On the third page, a Taiwanese address was given as Sunny's principal place of business. It was nowhere stated expressly that Sunny was incorporated in Taiwan. However, in the front cover of the writ that appeared in the electronic filing system, Sunny was described as "Sunny Daisy Limited (Taiwan) Company ID No. 492640".

10 In November 2007, Sunny filed Summons No. 4966 of 2007, seeking leave to amend their Writ of Summons by amending the identification number of Sunny from "Foreign Reg No. 492640" to "Br Virgin Islands RC No. 492640". The basis of the application was that the error in description was merely an administrative error.

11 In Summons No. 5133 of 2007, WBG applied to set aside the judgment granted in favour of Sunny on 17 March 2006 on the basis that the change in Sunny's description was new information

that had arisen which warranted the setting aside of the judgment and the granting of leave to defend so that this issue could be tried at a full trial. WBG further objected to Sunny's application to amend its writ.

12 I heard both parties' submissions and decided that this court had no jurisdiction to set aside the judgment previously granted in Sunny's favour. I then dismissed WBG's application and permitted Sunny to amend its description to show its place of incorporation in all the documents filed in the proceedings.

The issues

13 The issues that arose in the applications were:

(a) whether a court of co-ordinate jurisdiction may set aside a judgment pursuant to a challenge to the status of that judgment; and

(b) whether leave to amend should be granted.

Sunny's case

14 In relation to the setting aside application, Sunny's case rested on the principle that one court of the High Court cannot set aside the judgment of a court of co-ordinate jurisdiction. In support of this, counsel for Sunny drew my attention to a myriad of precedents such as *Poh Soon Kiat v Hotel Ramada of Nevada t/a Tropicana Resort & Casino* [1999] 4 SLR 391("*Poh Soon Kiat*"), *Neo Corp Pte Ltd (in liquidation) v Neocorp Innovations Pte Ltd* [2006] 2 SLR 717 ("*Neocorp*") and English authorities such as *re Barrell Enterprises* [1973] 1 WLR 19("*Barrell Enterprises*").

15 In relation to the amendment application, counsel for Sunny referred to the affidavits filed in support of the same. The first affidavit was filed by one of its solicitors, Buay Kee Seng, Christopher. He exhibited a copy of Sunny's Certificate of Incorporation No. 492640 dated 22 April 2002 which was issued by the Registrar of Companies of the British Virgin Islands ("BVI"). He noted that in the writ of summons filed on 4 July 2005, Sunny's identification number had been stated as "Foreign Reg No.: 492640". In the EFS electronic template, however, the identification number had been stated as "(Taiwan) Company ID No.: 492640" or "(Taiwan) RC No. 492640" due to an administrative error. This was incorrect and it was therefore necessary to amend the identification number in the writ so that it clearly disclosed the place of incorporation of Sunny. The amendment, if allowed, would not effect any substantive change of party to the action but simply correct an administrative error.

16 A further affidavit was filed by Mr Wang Shun Te, a director of Sunny. He averred that, in all the relevant documents passing between Sunny and WBG in relation to the supply of goods between May 2003 and September 2004, the supplier had been clearly identified as "Sunny Daisy Limited". Neither Sunny nor Mr Wang had made any statement to WBG relating to Sunny's place of incorporation or its registration number. Nor was such information sought by WBG. Referring to WBG's allegation that Sunny had always referred to itself as being a Taiwanese registered company, Mr Wang pointed out that it had actually described itself simply as "Sunny Daisy Limited (Foreign Reg No. 492640)" in all its pleadings. It had never represented itself as a Taiwanese registered company in its invoices or in any affidavit filed in the present proceedings. What Sunny did was to provide a contact address in Taiwan for purposes of placing orders. No statement was ever made as to its registered address or place of incorporation.

17 Mr Wang denied that Sunny was attempting to replace a Taiwanese Sunny Daisy by a BVI

entity of the same name. There was only one Sunny in the transactions between the parties: Sunny Daisy Limited (Foreign Reg No. 492640) was the same party as Sunny Daisy Limited (British Virgin Islands RC No. 492640). In response to WBG's contention that Sunny had no legal personality in Taiwan, Mr Wang averred that the issue of foreign law was a red herring.

WBG's case

18 With regard to its application to set aside the judgment, WBG averred that although it opposed Sunny's application to amend the particulars of its place of incorporation, WBG wanted to admit this new piece of evidence in the trial. Secondly, it contended that WBG should have brought a separate action or sought an order for a new trial; and thirdly, it said that the status of Sunny had an effect on the legality of the contract concluded between both parties. WBG's point was that as a foreign company that was not registered in Taiwan, it was illegal for Sunny to carry on business there and that made the contract between Sunny and WBG illegal. Because it had not known Sunny's true identity and status, WBG had been deprived of the opportunity of raising illegality as a defence to Sunny's claim. Accordingly, WBG submitted that leave to defend should not be granted and the judgment ought to be set aside.

19 WBG contended that the reference to Sunny as a Taiwanese company was more than a mere administrative error. First, WBG averred that the description should have not escaped Sunny's notice and Sunny should have corrected it from the outset of the proceedings. Second, it argued that there were two different entities, that is to say, Sunny the BVI company was not the entity operating in Taiwan and the latter had no legal personality (this was a slightly odd argument in that if the entity operating in Taiwan had no legal personality and was not the BVI company then there could not have ever been two entities). In support of this argument, WBG adduced a professional opinion on the status of Sunny in Taiwan from one Mr Arthur Shay. Accordingly, WBG vigorously opposed the amendment application.

Whether a court of co-ordinate jurisdiction may set aside a judgment pursuant to a challenge to the status of that judgment

20 Sunny averred that a court of co-ordinate jurisdiction could not set aside a judgment pursuant to a challenge to the status of that judgment. In contrast, WBG contended that Sunny had deliberately misled the court on this material fact and substituted an entirely different plaintiff for the original plaintiff. As such, it argued that there were good grounds to support setting aside of the judgment.

21 Jeffrey Pinsler in *Singapore Court Practice 200*6 (LexisNexis, Singapore, 2006) observes at para 42/1/5 that "a judgment or order may be set aside or varied in various circumstances". In *Ong Cher Keong v Goh Chin Soon Ricky* [2001] 2 SLR 94, the circumstances in which an order may be set aside were enumerated: first, where the order has been *obtained irregularly* (*ie,* the person obtaining the order has not complied with the requirements of the Rules of Court in some aspect); second, where the judgment has been obtained by *fraud*, this fraud must relate to matters which *prima facie* would be a reason for setting the judgment aside if they were established by proof and the fraud must have been discovered after the judgment was passed; and third, where an order or judgment has been obtained *in default of the appearance* of one of the parties to the suit.

22 None of the above requirements was satisfied in this case. First, the order that was obtained on 17 March 2006 was not obtained irregularly as Sunny had complied with all the requirements of the Rules of Court. It was a judgment that was obtained after a proper application was made and heard. Second, the order was not obtained in default of the appearance of one of the parties to the suit.

The third ground was the one which was the subject of some contention between the parties. While Sunny averred that the error was an administrative error, WBG sought to establish that judgment was wrongly granted and obtained by fraud. The onus of proving this fraud lay on WBG. As stated earlier, the fraud alleged must relate to matters which *prima facie* would be a reason for setting the judgment aside and the fraud must be discovered after the judgment was passed. On this ground, I found that there was no deliberate concealment on the part of Sunny regarding the place of incorporation. In all the transactions between Sunny and WBG, Sunny had never once represented themselves as a Taiwanese registered company. This was, therefore, not a reason to set aside the judgment.

23 Bearing in mind that the circumstances in which the order of 17 March 2006 was made did not fall into any of the specified categories, WBG had an onerous task to establish that that judgment should be set aside. In *Barrell Enterprises*, the appellant was ordered in a compulsory winding up of a group of companies (with which she had been concerned as director and/or liquidator in voluntary winding up) to hand over a number of documents to the Official Receiver as liquidator of those companies. The order was not complied with and on the Official Receiver's motion, Pennycuick VC made a committal order against the appellant. The Court of Appeal affirmed this order. After a number of unsuccessful applications, the appellant sought a new trial of the committal proceedings on the basis of fresh evidence but this was rejected by Brightman J.

24 She proceeded to appeal Brightman J's decision. The Court of Appeal held that having drawn up the order, the appellant could not seek to reopen her appeal from the original committal order on the ground of fresh evidence on *inter alia*, first, the basis that there was no justification for reopening the hearing of the appeal. Second, even *if* the High Court had the jurisdiction to set aside an order made by a court of co-ordinate jurisdiction on the basis of fresh evidence, the cause of action had long lapsed and Brightman J therefore had no jurisdiction to hear the appellant's application to set aside the committal order. Russell LJ's comments at 24 particularly, bear mention:

> We can accept without difficulty the notion that if a judgment has been obtained by fraud an action can be brought to set it aside. But when it comes to setting aside a judgment on the ground that fresh evidence has been obtained **it appears to us highly desirable that the Court of Appeal alone should have jurisdiction.**
>
> [emphasis in bold added]

25 Further, he continued at 27:

> Even if technically the High Court was at first clothed with this jurisdiction we are of the opinion that this cause of action has long since lapsed because applications for rehearing on the ground of fresh evidence have for generations been made only to the Court of Appeal.

26 This case was followed by *Grafton Isaacs v Emery Robertson* [1985] 1 AC 97 where the Privy Council held that an order made by a court of unlimited jurisdiction, such as the High Court, had to be obeyed by the person against whom it was made until it had been set aside by the court. Further, the Court drew a distinction between orders which were either regular or irregular. It was only in the event of an *irregular* order, that the court that made the order could set it aside upon application to that court. In the event that it was a regular order, it could only be set aside by an appellate court.

27 Turning to the Singapore position, in *Poh Soon Kiat*, the defendant commenced a suit against the plaintiff to recover a debt arising from a loan. The defendant succeeded in obtaining summary judgment against the plaintiff but the plaintiff lodged an appeal to a judge in chambers. His appeal

was dismissed and the plaintiff did not pursue the matter further. Subsequently, however, upon reading newspaper reports regarding actions involving Star Cruise and Sun Cruises against the Overseas Union Bank, the plaintiff was of the view that both decisions had rendered all gaming debts void. He then wrote to the Registry requesting further arguments before the judge in chambers in respect of the suit. Although an order of court had been made, the judge in chambers agreed to hear the plaintiff's arguments. He decided not to make any changes to his previous order and the plaintiff followed up by filing an originating summons seeking a declaration in the High Court that the judgment should be set aside.

28 In arriving at his decision, Tay Yong Kwang JC referred to several Malaysian authorities and in particular to the case of *Scotch Leasing Sdn Bhd(in receivership) v Chee Pok Choy* [1997] 2 MLJ 105 at 110, where the Supreme Court noted that:

> To allow the learned judge in the court below to reopen the matter nine moths after it was decided by himself (and for that matter, any other judge), a court would have to allow, equally, another judge exercising a co-ordinate jurisdiction to set it aside on the same jurisdiction point after, say 20 years, in the same case, for food for a goose is also food for a gander. **This would bring chaos to our judicial system which does not carry in such fanciful way and contended by learned counsel for the chargors.**
>
> [emphasis added in bold]

Recognising the undesirability of setting aside the order, Tay J emphasised that "[n]o High Court sits in an appellate, reversionary or supervisory jurisdiction over another High Court".

29 More recently, in *Neo Corp*, a procedural point of interest arose in the substantive appeal, concerning whether an order made by a High Court judge can be set aside by another High Court judge. The plaintiff sought to argue that the Judge did not have the jurisdiction or power to do so. The Court of Appeal affirmed that the position in *Barrell Enterprises* still held true (at [12]-[13]):

> [12]…[A]s the judge hearing SIC 1741 is of equal standing as Tay J who heard the winding-up proceedings, it is our opinion that **the Judge was not empowered to set aside the order of another High Court judge**…[I]t does not seem to us that setting aside the order is the proper procedure here. The proper approach would have been for the Judge, having considered and commented on order 8, to simply rule on the application before him without purporting to set aside order 8.There will thus be two conflicting decisions of equal standing, and it is open to either party to take it up on appeal…
>
> [13] While the situation here is quite different from that in *Barrell Enterprises* in the sense that [the plaintiff] was not present before the court when Tay J made order 8, **the ruling in *Barrell Enterprises* that the High Court cannot review or set aside its own order still holds good.**
>
> [emphasis in bold]

30 The authorities made it plain that this Court had no jurisdiction to set aside its own judgment in this action, much less one that had been affirmed on appeal by the Court of Appeal. As I concluded in Suit 470 of 2005, WBG was unable to prove to me at that time that there were any triable issues in respect of the claim and it does not now fall to them to seek to raise new issues nearly seventeen months later.

The amendment application

31 Order 20, rule 5 of the Rules of Court (Cap 322, R 5, 2004 Rev Ed) ("ROC"), provides as follows:

> 5. --(1) Subject to Order 15, Rules 6, 6A, 7 and 8 and this Rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner(if any) as it may direct.
>
> …
>
> (3) An amendment to correct the name of a party may be allowed under paragraph (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the Court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or, as the case may be, intended to be sued.

32 The Singapore and English courts have demonstrated a certain amount of flexibility in permitting amendments to be made in applications for leave to amend for various purposes while being mindful of the need to ensure that the mistake was not a deliberate error on the part of a litigant. In *Ketterman v Hansel Properties Ltd* [1987] AC 189("*Ketterman v Hansel*"), Lord Brandon distilled the principles on which the discretion to allow or refuse an application to amend could be exercised (at 212): first, the amendments should be made as are necessary to enable the real questions in controversy between the parties to be decided; second, the amendments should not be refused solely because they have been necessitated by the honest fault or mistake of the party applying for leave; third, however blameworthy a party may be for failing to amend the pleadings earlier, and however late the application is made, an application to amend would be permitted by the courts provided it would not prejudice the other party; and fourth, there is no injustice to the other party if he is compensated by costs.

33 Bearing these principles in mind, I considered the arguments raised by both parties and concluded that the thrust of the issue really boiled down to this: was the amendment Sunny was seeking to make done to correct a inconsequential misdescription arising out of an administrative error or was it a substantive amendment involving a change of party? Of course, as the Rules make clear, even an amendment which would involve substituting a new party may be allowed in appropriate circumstances but the burden on the plaintiff to show that this should be allowed would be very heavy in a case where, as at present, the application is made after the plaintiff has obtained judgment.

34 I was satisfied on the evidence before me that the application for amendment was genuinely made in order to correct an error rather than to substitute one party for another. It was clear from even WBG's evidence that there was no Taiwanese incorporated company known as Sunny Daisy Limited. It was equally clear from the documentary evidence that from the beginning the registration number given in respect of Sunny was the number of the registration certificate issued by the competent authorities in BVI. Thus, the mistake that was made in adding the words "Taiwan" or "Taiwan RC" to the plaintiff's description in the EFS electronic template was simply a misdescription arising from carelessness or inadvertence rather than an attempt to use a different party as the plaintiff. Since I accepted this evidence, the only issue became whether the proposed amendment should yet be rejected because to allow it would cause prejudice to WBG.

35 In my judgement, the amendment was not prejudicial to WBG. It was clear that in objecting to the amendment, WBG was seeking to raise and re-litigate issues that had already been decided before me and the Court of Appeal. First, the Court of Appeal and I had concluded that Sunny was the creditor and *not* Internation, as WBG had sought to establish. The objective documentary evidence

established that Sunny did *not* misrepresent its place of incorporation. In the Writ of Summons and Reply & Defence to Counterclaim, Sunny had described itself as "Sunny Daisy Limited (Foreign Reg No. 492640)" which was a correct description as far as it went, the mistake was only in the template which added the reference to Taiwan. Further, in the series of invoices issued from 2003 to 2004, the letterhead of the invoices merely stated that Sunny was located at a Taiwanese address. Given that the goods were delivered from Taiwan, this was hardly surprising. The references to Taiwan that appeared on some documents in the proceedings were ambiguous and did not necessarily imply that Sunny was incorporated in Taiwan; it could merely have been registered there.

36 It seemed to me disingenuous on the part of the WBG to now seek to run the argument that Sunny in Taiwan was different from Sunny in BVI. There was only one entity, the entity incorporated in BVI. There was no independent entity incorporated in Taiwan with whom Sunny could have been confused. It did not mean that by seeking leave to amend in order to clearly specify its place of incorporation, Sunny was revealing that there were actually two entities and *ipso facto,* this would immediately render the contract entered between WBG and Sunny illegal and unenforceable.

37 WBG had adduced the opinion of a Mr Arthur Shay, an attorney licensed in Taiwan. In Mr Shay's first affidavit dated 16 November 2007, he claimed to have investigated the status of Sunny and discovered that "no such company of Sunny Daisy Limited, either in [the]form of the domestic company or a recognised foreign company, has ever legally registered or existed in Taiwan"(at para 4). Further, Shay purportedly discovered:

> …in the record we have reviewed, Sunny Daisy claimed itself a Taiwanese company carrying out a government registration number of six digits in its transactions with WBG Network(Singapore)PTE LTD by 2005.

Next, he contended that under Taiwanese law (Article 19 of Taiwan Company Act), "conducting business or making transactions in the name of a company without first of all completing its legal set up registration in the Authority as required"(para 5) is illegal. He concluded that Sunny was never at any time a legal entity in Taiwan.

38 In response, Sunny adduced the opinion of a Mr Hou Yung Fun, an attorney licensed in Taiwan. In Mr Hou's affidavit dated 2 January 2008, he found that first, Sunny never represented themselves to be "a Taiwan registered company having any registration number of six digits in its transactions" with WBG Network (para 6) as WBG Network asserted. At para 10, he explained that:

> Under Taiwan laws, a foreign-registered company such as Sunny Daisy Limited, is <u>not required</u> to apply to the Ministry of Economic Affairs and/or the Bureau of Foreign Trade under Taiwan laws <u>for operating out of Taiwan without transacting business within Taiwan.</u>
>
> [emphasis in original]

Mr Hou's affidavit served to cast doubts on Mr Shay's bare assertions. First, unlike Mr Shay who asserted that Article 19 would render the transactions between parties void or unenforceable in the event of non-completion of the registration of the place of incorporation, Mr Hou pointed out that the penalty was not rendering the contract illegal under Taiwanese laws but imprisonment, as seen from the express wording of Article 19. Second, Mr Shay alleged that Sunny had conducted business in Taiwan but failed "to complete its legal registration set up" in his 1st affidavit. Yet, in his second affidavit on 11 January 2008, he retracted from his original position and stated that whether or not Taiwanese laws would apply to it, would depend "upon the actual factual matrix of the case" (para 3). If Sunny carried out business in Taiwan, it would be subject to Taiwanese laws but if it

carried out business "with no connection to Taiwan", then Mr Shay would have to agree with Mr Hou. It could be seen from the two opinions that WBG's assertion that the contract was void because Sunny was not registered in Taiwan was a hotly debateable one and that the finding on this issue was by no means a foregone conclusion.

39 In any event, I did not find it necessary to adjudicate on the assertions as to the law of Taiwan. Even assuming that there was a basis for a defence of illegality to be raised by WBG, I considered that it was too late for WBG to raise such defence after judgment had been entered by me and affirmed by the Court of Appeal. If in 2005 or 2006, WBG had carried out the searches on Sunny that it carried out in 2007 it would have found out that Sunny was not registered in Taiwan. It would then have been able to put forward the illegality defence. It was too late for it to get a second bite (in fact third bite) of the cherry now after its appeal against the judgment had been dismissed. It was WBG's task to find and put forward all possible defences at the summary judgment stage. It had not done so and could not blame its omission on the mistake in the EFS electronic template. I therefore considered that allowing the amendment would not deprive WBG of any defence that would otherwise have been open to it.

40 In considering the issue of prejudice, I was guided by Lord Justice Bramwell's view in *Tildesley v Harper* (1878) 10 Ch.D. 393 at 396:

> My practice has always been to give leave to amend unless I have been satisfied that the party applying was acting mala fide, or that, by his blunder, he had done some injury that the party applying could not be compensated for by costs or otherwise.

41 As Andrew Phang JA observed in *Lai Swee Lin Linda v Attorney-General* [2005] SGCA 58 at [4]:

> The rules of civil procedure constitute the basic structure within which the substantive merits of particular cases are ultimately determined. To this end, whilst the courts should not permit the application of the rules of civil procedure to be productive of unnecessary technicality and/or substantive injustice, they must, by the same token, also ensure that where contravention of these rules would in fact result in substantive injustice, such contravention should not be permitted.

Unless there was substantive injustice or prejudice caused to WBG Network, leave to amend should be permitted. In the present case, the correction in the place of incorporation did not raise any new issues in relation to the original suit nor was WBG able to show any real prejudice.

Conclusion

42 For the foregoing reasons, in respect of Summons No. 4966 of 2007, I ordered that the plaintiffs' description of its place of incorporation should be changed accordingly in the heading of all other documents filed in the proceedings. In respect of Summons No 5135 of 2007, the appeal was dismissed.