IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 207

Suit No 437 of 2017
(Registrar's Appeal Nos 82 and 363 of 2019)

Between

Lee Bee Eng (formerly trading as AFCO East Development)

… *Plaintiff*

And

Cheng William

… *Defendant*

JUDGMENT

[Civil Procedure] — [Parties] — [Joinder]
[Civil Procedure] — [Parties] — [Substitution]
[Civil Procedure] — [Rules of court]
[Civil Procedure] — [Striking out]

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Lee Bee Eng (formerly trading as AFCO East Development)
v
Cheng William

[2020] SGHC 207

High Court — Suit No 437 of 2017 (Registrar's Appeal Nos 82 and 363 of 2019)
Lee Seiu Kin J
8 April, 12 September, 8 October, 25 November 2019, 13 February 2020

1 October 2020

Lee Seiu Kin J:

Introduction

1 These appeals arise out of the decision of the assistant registrar (the "**AR**") to add Ms Lee Bee Eng ("**Ms Lee**") as a plaintiff to Suit No 437 of 2017 ("**Suit 437/2017**") pursuant to O 15 r 4 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("**O 15 r 4**"), and to strike out the original plaintiff and its claims.

2 The matter had been adjourned a number of times, initially at the behest of the defendant for him to apply to be legally aided, then on the application of the plaintiff to file further evidence, and again at the defendant's request on account of recently appointed solicitors. The hearing was finally completed on 25 November 2019 and I adjourned it to a later date to announce my decision. On 13 February 2020, I set aside the AR's decision and ordered a substitution of the original plaintiff for Ms Lee pursuant to O 15 r 6 of the Rules of Court

(Cap 322, R 5, 2014 Rev Ed) ("**O 15 r 6**"). In consequence, I dismissed Registrar's Appeal No 82 of 2019 ("**RA 82/2019**") and allowed Registrar's Appeal No 363 of 2019 ("**RA 363/2019**") in part.

Facts

The parties

3 Ms Lee is a director of AFCO East Development Pte Ltd[1], a private limited company that undertakes general contracting work, and "other specialised construction and related activities".[2] AFCO East Development Pte Ltd ("**AFCO**") was the original plaintiff in Suit 437/2017.

4 The defendant is Mr William Cheng.

Background to the dispute

5 On 15 May 2006, the plaintiff registered a sole proprietorship with the Accounting and Regulatory Authority of Singapore under the name and style of "AFCO East Development" (the "**Sole Proprietorship**").[3]

6 In early 2012, the defendant approached the Sole Proprietorship to replace a prior contractor who had been engaged to construct a single storey terrace house at 210 Yio Chu Kang Road (the "**Project**"). The Sole Proprietorship provided a quotation of $460,000 for the Project via a work order

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1 Lee Bee Eng's affidavit for SUM 4360/2018 dated 20 September 2018 ("LBE-1") at para 1.

2 LBE-1, Tab 13 at p 95.

3 LBE-1 at para 6, Tab 12 at p 92.

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dated 23 April 2012[4], which was accompanied by a form of quotation ("**Form of Quotation**") setting out the contract period, the scope of works and a detailed breakdown of the tender price.[5] On 24 April 2012, the defendant issued a letter of award (the "**Letter of Award**") to the Sole Proprietorship[6] and signed the Form of Quotation. On 6 May 2014, (i) AFCO was incorporated, (ii) the Sole Proprietor's business was allegedly "transferred to AFCO", and (iii) the Sole Proprietorship was terminated.[7]

7 Disputes subsequently arose between the parties. From 23 April 2012 to 31 October 2016, five progress payment invoices totalling the contract sum of $460,000 were issued to the defendant for works done for the Project.[8] The defendant only paid $322,000 in satisfaction of the first three invoices and part of the fourth invoice.[9] AFCO commenced Suit 437/2017 against the defendant on 12 May 2017, claiming the outstanding progress payments totalling $138,000 ("the **Progress Payments**"). It also claimed that the defendant had (i) failed to pay $193,280 for completed variation works ("the **Variation Payments**"); and (ii) wrongfully called on a performance bond provided by the Sole Proprietorship in the defendant's favour.[10]

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4 LBE-1, Tab 4 at p 51.

5 Lee Siow Hua's affidavit for SUM 4037/2018 dated 24 October 2018 ("LSH-1"), Tab 18 at pp 200 to 230.

6 LBE-1 at para 14, Tab 5 at p 53.

7 LBE-1 at para 23, Tab 12 at p 92; See also LSH-1 at para 21(b).

8 Lee Bee Eng's affidavit for RA 82/2019 ("LBE -2") dated 25 September 2019 at paras 11 to 33.

9 LBE-2 at paras 29, 34, 36 to 37.

10 Statement of Claim (Amendment No 1) at paras 19, 25 to 26.

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Procedural history

Suit 437/2017

8 In his defence filed on 18 January 2018, the defendant's main argument was that AFCO had no standing to bring the suit. The contract was between him and the Sole Proprietorship[11], not AFCO. This was evinced by the Letter of Award (which had been issued to the Sole Proprietorship[12]) and the Form of Quotation (which had been signed by the Sole Proprietorship's project manager).

SUM 4037 & SUM 4360

9 The defendant then filed Summons No 4037 of 2018 ("**SUM 4037/2018**") on 31 August 2018 to (i) strike out AFCO's claims; and (ii) seek security for costs. In response, AFCO filed Summons No 4360 of 2018 ("**SUM 4360/2018**") to have the Sole Proprietor added as a plaintiff to Suit 437/2017.

10 Both summonses were heard before the AR. On 13 December 2018, the AR made the following orders:[13]

(a) that the Sole Proprietor be added as a plaintiff pursuant to O 15 r 4[14]; and

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11 William Cheng's affidavit for SUM 4037/2018 dated 31 August 2018 ("WC-1") at paras 5 to 10.

12 Defence at paras 2 to 4.

13 Minute Sheet, 13 December 2018, p 6.

14 Minute Sheet, 13 December 2018, p 3.

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(b) that AFCO (as a plaintiff) and its claims against the defendant be struck out.

11 During a further hearing on 26 December 2018, the AR declined to grant the defendant's application for security for costs.[15] The AR determined that the pre-requisite conditions under O 23 r 1 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("Rules of Court") had not been satisfied and that consequentially, there was no discretion to make such orders.

RA 82/2019

12 On 7 March 2019, the defendant commenced RA 82/2019, appealing against the AR's decision to (i) add the Sole Proprietor as Ms Lee; and (ii) decline his application for security for costs. Ms Lee did not appeal against the AR's decision.

13 RA 82/2019 was heard before me on 12 September, 8 October and 25 November 2019. On 12 September 2019, I dismissed the defendant's appeal against the AR's decision not to grant security for costs. I observed that such orders are usually made in situations involving foreign plaintiffs or companies. This was not such a case. Considering all the circumstances, there was no reason to order security for costs. The hearing on 8 October 2019 was adjourned upon the defendant's application and resumed on 25 November 2019. For reasons that shall be explained later in this judgment at [21], Counsel for Ms Lee, Mr Sia Dewei, Alvin ("**Mr Sia**"), orally sought leave to file an appeal out of time against the AR's decision, *ie*, to appeal against the AR's decision to strike out

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15 Minute Sheet, 26 December 2018 at pp 5 to 6.

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AFCO and its claims. I granted such leave and RA 363/2019 was subsequently filed on 2 December 2019.

The defendant's case

Issue 1: Did the AR make any procedural errors in substituting AFCO for Ms Lee as the plaintiff in this suit?

14 Counsel for the defendant, Ms Goh Wei Wei ("**Ms Goh**") raised two arguments.

15 Firstly, it was argued that O 15 r 4 was not the proper provision for adding the Sole Proprietor as a plaintiff. The effective outcome of the AR's decision – to strike out AFCO's claims and add the Sole Proprietor – was a *substitution* of plaintiffs. This should have been more appropriately pursued under O 15 r 6 which was a provision created to effect such corrective action. O 15 r 4, on the other hand, was meant to consolidate plaintiffs. Here, AFCO was hardly a plaintiff with proper standing, much less one that could expect to be consolidated pursuant to O 15 r 4.

16 Secondly, Ms Goh argued that the AR did not have the power to add the Sole Proprietor under O 15 r 6 as proceedings had already concluded. Citing the Court of Appeal in *Ernest Ferdinand Perez De La Sala v Compania De Navegación Palomar, SA and others and other appeals* [2018] 1 SLR 894 ("***Ernest Ferdinand***"), she argued that the power to order joinders only exists when there remains something to be done in the matter. It followed that since AFCO and its claims had been struck out, there was nothing more to be done in the matter. Accordingly, the AR's power of joinder no longer existed.

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Issue 2: Should the AR have exercised its discretion to substitute AFCO for Ms Lee as the plaintiff in this suit?

17 Ms Goh submitted that a court should not exercise its power of joinder where the pleaded case is plainly unsustainable (*Alliance Entertainment Singapore Pte Ltd v Sim Kay Teck and another* [2007] 2 SLR(R) 869 ("*Alliance Entertainment*")). Ms Goh argued that AFCO/Ms Lee's case was plainly unsustainable since Ms Lee was not entitled to the Progress Payments in the first place. Ms Lee's entitlement to the Progress Payments was subject to a qualified person first evaluating and certifying the work done[16]. Having never obtained such a certification, Ms Lee could not have been entitled to the Progress Payments.

18 Similarly, Ms Lee was not entitled to the Variation Payments. The defendant contended that there were neither directions from him to carry out such works nor was there an agreement that the defendant would make additional payment for the same. In support of his contention, the defendant referred to (i) the last page of the Form of Quotation (which states, "price is lump sum @ $460k — any variation would be lower and not higher than the said sum of $460k")[17] and (ii) AFCO/Ms Lee's failure to produce any invoices for variation works[18]. Collectively these suggested that Ms Lee had no basis to claim for the Variation Payments and that her pleaded case was therefore unsustainable. Accordingly, the Court should not exercise its power of joinder.

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16 DSS at para 17. See also, Lee-2, Tab 2 at pp 17, 19.

17 LSH-1, Tab 18 at p 230.

18 DSS at para 21(a).

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Issue 3: Were Ms Lee's claims time-barred?

19 With regard to Ms Lee's claims for the Progress Payments, the defendant submitted that the cause of action accrued when the contractual relationship was created, *ie*, 24 April 2012, when the Letter of Award was signed. SUM 4360/2018 was subsequently commenced on 20 September 2018 — more than six years after the accrual of the cause of action. It followed that Ms Lee was barred from bringing any action by virtue of s 6(1)(*a*) of the Limitation Act (Cap 163, 1996 Rev Ed) ("Limitation Act").

The plaintiff's case

Issue 1: Did the AR make any procedural errors in substituting AFCO for Ms Lee as the plaintiff in this suit?

20 As a preliminary point, Mr Sia did not dispute that the defendant's contract had been with the Sole Proprietorship rather than AFCO.

21 Mr Sia advanced two arguments. Firstly, he contended that Ms Goh's arguments about the applicability of O 15 r 6 (as opposed to O 15 r 4) were excessively technical. Secondly, he submitted that the AR's power of joinder still subsisted since the AR made the order for the Sole Proprietor to be added as a plaintiff *before* he struck out AFCO and its claims.[19] This meant that the proceedings had not yet concluded in the manner as described by the Court in *Ernest Ferdinand* ([16] *supra*). At my invitation, Mr Sia made an application to appeal the AR's decision out of time, affording me the discretion to reverse the striking out and to order a substitution pursuant to O 15 r 6. With my leave, Mr Sia did so by way of RA 363/2019.

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19 Minute Sheet, 13 December 2018, pp 3 to 4.

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Issue 2: Should the AR have exercised its discretion to substitute AFCO for Ms Lee as the plaintiff in this suit?

22 Mr Sia argued that Ms Lee's case is not plainly unsustainable. While there was an obligation to obtain QP certification for works done, this was impossible because the defendant had frustrated attempts to obtain such certification.[20] Ms Lee should not be precluded from pursuing the outstanding progress payments due under the invoices. As for the variation works claim, Mr Sia referred to the supporting invoices found in Ms Lee's bundle of documents filed on 3 April 2019[21] and an affidavit dated 22 November 2018, stating that that the defendant had retrospectively added the wording on the last page of the Form of Quotation.[22] Accordingly, Ms Lee was still entitled to the Variation Payments and her claim was not plainly unsustainable.

Issue 3: Were Ms Lee's claims time-barred?

23 With regard to the Progress Payments, Ms Lee's position is that the cause of action accrued on the date of the alleged breach: *Management Corporation Strata Title Plan No 3322 v Mer Vue Developments Pte Ltd and others (King Wan Construction Pte Ltd and others, third parties)* [2016] SGHC 28 at [28]). The relevant dates, therefore, were the dates on which invoices for the Progress Payments were issued (13 September 2012 and 31 October 2016[23]). While the 31 October 2016 invoice was issued within the six-year limitation period (*ie*, after 20 September 2012), the 13 September 2012 invoice was not.

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20 Statement of Claim (Amendment No 1) at para 27(b).

21 PWS at para 26.

22 Lee Siow Hua's affidavit for Summons Nos 4354 and 4360 of 2018 dated 22 November 2018) at p 7.

23 LBE-2 at paras 26, 29, Tab 4 at p 32; Tab 5 at p 40.

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However, Ms Lee's position is that partial payment was made for the 13 September 2012 invoice on 17 October 2012, this being the relevant date of breach for the 13 September 2012 invoice. The outstanding $46,000 from this invoice was therefore not time-barred.

24 With regard to the Variation Payments, I granted Ms Lee leave to file further documents showing that the relevant invoices had been issued after 20 September 2012. These are set out below:[24]

Invoice number	**Date of issue**
S1962	20 February 2013
S1958	8 March 2013
S1980	17 March 2013
S1983	24 March 2013
S1984	19 April 2013
S1985	7 May 2013
S2010	7 September 2013

[24] Plaintiff's Written Submissions for RA 82/2019 for 8 October 2019 ("PWS") at para 26; See also, Plaintiff's Bundle of Documents dated 3 April 2019 at pp 40, 43 to 44, 48, 50, 53 and 56.

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All of these invoices were issued in 2013 and Ms Lee's claim under them could only have accrued after these dates.[25] Accordingly, Ms Lee submits that the variation works claim is similarly not time barred.

Issues on appeal

25 There are three issues in this appeal:

(a) Did the AR make any procedural errors in substituting AFCO for Ms Lee as the plaintiff in this suit?

(b) Should the AR have exercised its discretion to substitute AFCO for Ms Lee as the plaintiff in this suit?

(c) Were Ms Lee's claims time-barred?

Decision

Issue 1: Did the AR make any procedural errors in substituting AFCO for Ms Lee as the plaintiff in this suit?

26 I first consider whether the AR was correct in determining that the Sole Proprietor is the rightful claimant in Suit 437/2017. In the hearing before the AR, AFCO submitted that the Sole Proprietorship's rights were equitably or legally assigned to AFCO. AFCO relied on a document titled "Agreement for sale of business" dated 1 May 2014 wherein the Sole Proprietorship agreed to sell to one "Mdm Tan", the managing director of AFCO, "all of the [Sole Proprietorship's rights under its contracts, licenses and agreements". The AR did not find evidence of any legal assignment to AFCO. The buyer under the

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[25] PWS at para 30.

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"Agreement for sale of business" was Mdm Tan and there was no evidence to show a further assignment of contractual rights to AFCO. Moreover, the defendant had not been given any express notice in writing of this purported assignment, as required by s 4(8) of the Civil Law Act (Cap 43, 1999 Rev Ed).[26] On this reasoning, the AR struck out AFCO and its claims.

27 I find that the AR correctly determined that AFCO was an improper party to the proceedings and that the Sole Proprietor, representing the now terminated Sole Proprietorship, should replace it. In fact, I find it both surprising and self-contradictory that AFCO made submissions about a supposed legal assignment when it was concurrently seeking to add the Sole Proprietor as a plaintiff. Had there truly been a legal assignment, there would have been no need to add the Sole Proprietor to "support" AFCO's claims. It is telling that Ms Lee has not revived arguments as to any legal or equitable assignment in the proceedings before me.

28 The question turns to whether the AR incorrectly relied on O 15 r 4 to effect a substitution of the parties. Indeed, SUM 4360/2018 was not commenced simply to *add* the Sole Proprietor as a plaintiff. On closer examination, the pith and substance of the application was to *substitute* AFCO for Ms Lee as the plaintiff in this suit. The proper provision to achieve this was O 15 r 6.

29 At the outset, it should be made clear that O 15 r 4 and O 15 r 6 share a common objective. Both provisions ultimately seek to ensure that "all necessary parties [are] before the court such that all the issues can be determined by the court", "without the delay, inconvenience and expense of multiple actions"

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[26] Minute Sheet, 13 December 2018, pp 5 to 6.

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(*Singapore Civil Procedure 2020* vol I (Chua Lee Ming gen ed) (Sweet & Maxwell, 10th Ed, 2020) ("*Singapore Civil Procedure*") at paras 15/6/2 and 15/4/2). The difference lies in the circumstances under which each apply.

30 O 15 r 4 is facilitative. It streamlines litigation when "common question[s] of law or fact" arise or when multiple suits concern the "same transaction or series of transactions". O 15 r 6 is remedial and reactive – it responds to misjoinders or mistaken non-joinders. O 15 r 6 seeks to "save rather than to destroy": *Singapore Civil Procedure* at para 15/6/2. Here, there was no "common question of law or fact" nor any relief claimed that "arise out of the same transaction" between Ms Lee and AFCO. AFCO simply had no standing to bring suit in a contract it was not privy to. But this was an entirely curable mistake. The AR therefore sought to substitute AFCO for the proper party – a remedial substitution rather than an administrative consolidation in other words. As such, an appropriate provision to effect such a correction should have been O 15 r 6 rather than O 15 r 4. I therefore set aside the AR's orders at [10(a)] and [10(b)].

31 I should also add that this same result could have been achieved by invoking O 20 r 5(3) of the Rules of Court:

> 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 There are two limbs to this provision. First, the party seeking amendment must have made a genuine mistake in naming the wrong party; and second, the effect of the mistake must not have been to mislead the respondent

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or to cause any reasonable doubt as to the identity of the party bringing the claim: *Lim Yong Swan v Lim Jee Tee* [1992] 3 SLR(R) 940 ("*Lim Yong Swan*"). This approach was applied in *Thu Aung Zaw v Ku Swee Boon (trading as Norb Creative Studio)* [2018] 4 SLR 1260 ("*Thu Aung Zaw*") where a party substitution was effected under similar circumstances.

33 There, Norb Creative Studio ("Norb"), a sole proprietorship, sued Mr Thu Aun Zaw ("Thu") on a personal guarantee for an unpaid sum. Norb obtained summary judgment but Thu failed to pay the judgment debt. Norb then took out bankruptcy proceedings against Thu. Thu resisted this on the ground that Norb was not the proper plaintiff. Ultimately, the learned Judge allowed Norb to amend the name of the plaintiff in the summary judgment obtained against Thu: *Thu Aung Zaw* at [31]–[34] ([32] *supra*).

34 The facts are analogous to the present case. Importantly, I find that Ms Lee had made a genuine mistake in naming the wrong party and that, crucially, Mr Cheng had been under no illusions as to who the actual plaintiff was. He had, "in truth and in substance", known that Ms Lee was bringing the claim, even if there had been a "nominal defect in form" (*Lim Yong Swan* at [16]). As such, I would have (if the parties had so submitted), allowed an amendment pursuant to O 20 r 5 of the Rules of Court as well.

35 Additionally, I find that the AR's power of joinder was not extinguished by the AR's order to strike out AFCO and its claims. Ms Goh's argument assumes that something must remain to be done between the *original parties* to the suit for the power to subsist. If one party was struck out *before* a new one was added, the suit was dead and nothing remained to be done. But her argument turns on what the phrase "something remains to be done" means. I find that the

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power of joinder extends to cover situations where something remains to be done between *an existing party* and *a new third party* seeking to be added to the action. This is so for three reasons.

36 First, the provision is to be read with a view towards saving and enabling rather than destroying and disabling: *Singapore Civil Procedure* at para 15/6/2. The present application seeks to do exactly this. At its heart, a party substitution was under way. Adding another party to the action was the final step in the broader effort to substitute AFCO with Ms Lee as the proper plaintiff. Until this was achieved, something remained to be done. Specifically, a controversy remained to be determined between Ms Lee and Mr William Cheng.

37 Second, such a reading is consistent with the interpretation of the other parts of O 15 r 6. As the Court of Appeal in *Ernest Ferdinand* ([16] *supra*) clarified, the existence of the power and its exercise are separate inquiries: *Ernest Ferdinand* at [196] and [202]. That being said, the analysis applied in the latter inquiry may very well inform the analysis adopted in the former. Here, I note that the "just and convenient" limb under O 15 r 6(2)(*b*)(ii) permits joinders where "there is as between the *third party* and any *existing party* some question or issues having sufficient relation to the main dispute" (emphasis added): *Singapore Civil Procedure* at para 15/6/2. In other words, courts can take into account any "question or issue arising out of … any relief or remedy claimed in the cause or matter" between *third parties* and *existing parties* when evaluating whether to exercise its power of joinder. It would be entirely consistent for courts to do the same when determining the existence of such a power in the first place.

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38 Finally, adopting Ms Goh's argument would lead to an absurd result. Taking her argument to its logical extension, the defendant would have had no cause for complaint if the AR had simply added Ms Lee to the action *before* striking out AFCO as a party. Indeed, this was exactly Mr Sia's defence – the AR had added Ms Lee to the action while AFCO was still a party to the proceedings. The power of joinder therefore subsisted at the time of its exercise. Though its simplicity is attractive, this series of arguments cannot be accepted. The court's power of joinder should not depend on whether striking out was done before or after the party addition. The availability of this power should abide by the provision's core principle – to save rather than destroy.

39 Accordingly, I found that the power of joinder still subsisted at the time of its exercise. And since Ms Lee has filed an appeal against the AR's decision to strike out AFCO and its claims, I was afforded the discretion to reverse the striking out and to order a substitution pursuant to O 15 r 6.

Issue 2: Should the AR have exercised his discretion to substitute AFCO for Ms Lee as the plaintiff in this suit?

40 I accept Ms Goh's submissions on the law, namely that a court should not exercise its power of joinder where the pleaded case is plainly unsustainable: *Alliance Entertainment* ([17] *supra*).

41 However, I do not accept the defendant's argument. At this preliminary stage, Ms Lee's case is not so hopeless that it fails to withstand basic scrutiny. It has been pleaded that the Sole Proprietorship was unable to obtain the necessary QP certification because of the defendant's actions. This raises a plausible defence in Ms Lee's favour and Ms Lee should be given the opportunity to raise evidence on this point at trial. Ms Lee has also presented

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evidence of variation works invoices issued to the defendant, suggesting that these works may have been carried out on the defendant's instructions. Ms Lee has also given evidence, by way of an affidavit dated 22 November 2018, that the defendant unilaterally added the wording on the last page of the Form of Quotation (referred to at [22] above).[27] This was allegedly to give the false impression that the parties had agreed that the defendant would not be liable for the additional cost of variation works. This sufficiently rebuts the defendant's argument that the variation works claim is "clearly fanciful".[28]

42 The present facts are also distinguishable from *Alliance Entertainment*. In *Alliance Entertainment*, the plaintiff's claims were entirely based on their alleged status as statutory exclusive licensees. Having failed to establish that they were indeed statutory exclusive licensees, the plaintiffs attempted to add the copyright owners as co-plaintiffs in their suit. Unfortunately, the copyright owners were not statutory exclusive licensees either. Their addition as co-plaintiffs, therefore, could not entitle *any* of the parties to the rights/remedies available to a statutory exclusive licensee. The case being so fatally flawed, Menon JC (as he then was) dismissed it as being plainly unsustainable.

43 This is quite different from the present case. It is clear that Ms Lee was a party to the contract and was therefore entitled to the rights and remedies afforded to her in her contract with the defendant. As such, the claim – as drafted for the original plaintiffs to the suit (AFCO) – could be adopted by Ms Lee without substantive changes. Unlike *Alliance Entertainment*, no difficulty

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27 Lee Siow Hua's affidavit for Summons Nos 4354 and 4360 of 2018 dated 22 November 2018) at p 7.

28 DSS at para 21.

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emerges in substituting one plaintiff for another because the nature of the claimant's rights and the substance of the claim, as originally pleaded, remains unchanged.

44 In the circumstances, I find no reason why I should not exercise my discretion under O 15 r 6 of the Rules to ensure that the proper parties are before this Court. To decline to do so would be to frustrate the objectives of the provision. I therefore order that AFCO cease to be a party to the proceedings pursuant to O 15 r 6(2)(*a*). I further order that the Sole Proprietorship should be added as a plaintiff pursuant to O 15 r 6(2)(*b*)(i).

Issue 3: Were Ms Lee's claims time-barred?

45 To determine whether the claim is time-barred, two relevant dates must be established: (i) the date on which action was commenced and (ii) the date on which the cause of action accrued. SUM 4360/2018 was commenced on 20 September 2018. The parties agree that she brought her action on this date. The issue is whether 20 September 2018 is more than six years from the "date[s] on which the cause[es] of action accrued": s 6(1) of the Limitation Act. The causes of action accrued when payment became due. As such, the relevant dates here are the dates on which invoices for the Progress Payments and the Variation Payments were issued.

46 I find that the causes of action for both the Progress Payments and the Variation Payments accrued well within the limitation period. The Variation Payment invoices, which were all issued in 2013 (see [24] above), are well within the six-year limitation period. As for the Progress Payment invoices, I accept Mr Sia's submissions that the material dates for the fourth and fifth invoices are 17 October 2012 and 31 October 2016. On the evidence before me,

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there is no justification for setting aside the AR's decision because of Ms Lee's claims being time barred.

Conclusion

47 For the reasons above, I dismissed RA 82/2019 and granted an order in terms of the first prayer in RA 363/2019. I ordered that AFCO be substituted as plaintiff for the Sole Proprietor pursuant to O 15 r 6(2)(*a*) and r 6(2)(*b*)(i) of the Rules of Court. I also ordered costs of both appeals in favour of Ms Lee, fixed at $6,000.

Lee Seiu Kin
Judge

John Lim Kwang Meng, Sia Dewei, Alvin and Ng Kai Ling (LIMN Law Corporation) for the plaintiff;
Goh Wei Wei and Ling Jia Yu (WongPartnership LLP) for the defendant.

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