Ram Thayalan Raman Siv and Another v Liew Yap Tong trading as Tong Heng Motor Work [2002] SGHC 177

Case Number : OS 93/2002

Decision Date : 12 August 2002

Tribunal/Court : High Court

Coram : Woo Bih Li JC

Counsel Name(s) : Audrey Wong (Rayney Wong & Eric Ng) for the plaintiff; Tan Cheng Yew (Tan Jinhwee Eunice & Lim) for the second defendant

Parties : Ram Thayalan Raman Siv; Another — Liew Yap Tong trading as Tong Heng Motor Work

Civil Procedure – Striking out – Incurring of more costs by separate action – Whether incurring of more costs prevents plaintiff from bringing separate action

Civil Procedure – Striking out – Nature of counterclaim – Whether defendant in an action must bring his claim for damages by way of counterclaim – O 15 r 2(1) Rules of Court

Civil Procedure – Striking out – Policy behind avoidance of multiple proceedings – Whether policy prevents a defendant from suing as a plaintiff in separate action

Civil Procedure – Striking out – Second defendants suing plaintiff for damages – Plaintiff bringing separate action arising from collision against second defendants for damages – Second defendants applying unsuccessfully to strike out action – Whether court's decision on parties' liabilities binds plaintiff on the amount of his claim

Judgment

GROUNDS OF DECISION

Background

1. Mr Liew Yap Tong trading as Tong Heng Motor Work, was the owner of a motor lorry No XA 9258A. Singapore Bus Services Limited ('SBS') was the owner of motor bus No SBS 6936L. On 2 March 2000, there was a collision between the lorry and the bus on Jalan Boon Lay. The lorry was driven by Mr Liew's driver one Lim Guan Chuan and the bus was driven by an employee of SBS, Ram Thayalan Siv.

2. SBS then commenced an action against Mr Liew on 8 August 2000 in MC Suit No 14703 of 2000 ('the 1st Action') to recover damages to the bus arising from the collision. That suit is defended by solicitors appointed by Mr Liew's insurers.

3. Mr Liew then appointed his own solicitors who filed the present action i.e MC Suit No 7188 of 2001 on 19 March 2001 ('the 2nd Action') to recover damages to the lorry arising from the same accident. The First Defendant in the 2nd Action is SBS' driver and the Second Defendant is SBS itself. The solicitors who act for SBS in the 1st Action also act for the First Defendant and SBS in the 2nd Action. For convenience, I will refer to them as SBS' solicitors and subsequent references to 'SBS' in the context of the 2nd Action includes the First Defendant.

4. SBS' solicitors then wrote to Mr Liew's solicitors to discontinue the 2nd Action and to make Mr Liew's claim by way of a counterclaim in the 1st Action. This was refused.

5. Accordingly, SBS then applied to strike out the 2nd Action on the ground that it was an abuse of the process of the court. The sole allegation for this ground was that the claim of Mr Liew must be made by way of a counterclaim in the 1st Action and not by way of a fresh action. The application was dismissed by a Deputy Registrar.

6. SBS then appealed to the District Court. That appeal was also dismissed.

7. SBS then appealed to the High Court and its appeal was heard by me. After hearing arguments, I dismissed the appeal. I now give my written reasons.

Arguments for SBS

8. Mr Tan Cheng Yew, Counsel for SBS, relied on the Law of Insurance (Third Edition) by Poh Chu Chai which states at p 756:

> ` **2. Insurer Not Entitled to Bring a Second Action**
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> When an insured suffers a loss owing to the negligence of a third party, the loss suffered by the insured may not be fully covered by the insured's own insurance policy. From an insured's point of view, if he is to recover fully for his losses he has to make a claim against the tortfeasor for that part of the loss which is not covered by his insurance policy. As far as the tortfeasor is concerned, his liability towards the insured is a single liability. Once a settlement has been made between a tortfeasor and an insured, the insured's cause of action merges with the settlement. The tortfeasor cannot be sued a second time based on the same cause of action. In *Buckland v. Palmer*, it was decided by the English Court of Appeal that after an insured had recovered his uninsured losses from a tortfeasor, an insurer who had indemnified the insured under an insurance policy was not entitled to bring an action against the tortfeasor to recover his portion of the loss. ….'

9. Mr Tan next relied on the Privy Council decision in *Yat Tung Investment Co Ltd v Dao Heng Bank* [1975] AC 581 for the proposition that the failure of a party to counterclaim that which should and could have been litigated in an earlier action has been treated as an abuse of process of the court.

10. Mr Tan then relied on *Talbot v Berkshire County Council* [1994] QB 290 where he cited part of the judgment of Stuart-Smith LJ at p 298 D/E:

> '… They were well aware that the plaintiff was seriously injured and must have known it was in his interest to join any personal injury claim in the existing proceedings since this would be litigated so far as liability was concerned at insurers' expense. There was no conflict of interest between insurers and the plaintiff; they were both concerned to minimise the plaintiff's liability and maximise that of the council. If need be the question of quantum could have been tried subsequently.
>
> Accordingly, I agree with the judge that this claim should be struck out unless there are special circumstances which make it inequitable to do so.'

11. Mr Tan also submitted that the rule in *Henderson v Henderson* (1843) 3 Hare 100 requires parties to litigation to present their whole case and it will not allow the same parties to re-open the same subject of litigation in respect of a matter which might have been brought forward earlier.

12. He submitted that the rule was intended to avoid multiplicity of proceedings which was against public policy. He further submitted that there would be duplication of costs and a risk of inconsistent decisions if Mr Liew was allowed to commence or continue with the 2nd Action.

13. As regards consolidation of proceedings, Mr Tan submitted that this was not possible as Mr Liew was being represented by two different firms of solicitors. On this point, he relied on a passage in para 4/9/2 of the White Book 1999:

> '… Moreover, as one firm of solicitors will usually be given the conduct of the consolidated action on behalf of all plaintiffs, it is generally impossible to consolidate actions in which different solicitors have been instructed (*Lewis v Daily Telegraph (No 2)* (1964) 2 QB 601.'

Arguments for Mr Liew

14. The sole reason for Mr Liew making his claim by way of the 2nd Action was that he wanted his own solicitors to act for him in his claim whereas the insurers' solicitors were acting for him in the claim by SBS. The claim by SBS (in the 1st Action) was for slightly less than $4,000. His own claim was for about $34,000.

15. Ms Audrey Wong, Counsel for Mr Liew in the 2nd Action, elaborated on and sought to justify this course of action. I quote from her written submission:

> '5. If one firm of solicitors is to act for the Plaintiff and his insurers in both suits, that solicitor will find himself immediately in a position of conflict of interest if he should receive different instructions from the Plaintiff and the insurers.
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> 6. Whilst an insurer may not find it commercially worthwhile to defend the suit and may be inclined to settle the claim, the Plaintiff, on the other hand, may hold a different view and may intend to prove that liability was totally on the other party. For this reason, if the insurers and the Plaintiff are separately represented, then the practical problem of one firm of solicitors being in a position of conflict owing to differing instructions from the insurers and the Plaintiff, will never arise. If desired, an insurer can instruct his solicitors to settle a claim on a without prejudice basis to the other suit commenced by the insured (the Plaintiff). Not handicapped by the said settlement, the Plaintiff can then proceed with his case in any manner he deems fit.
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> 7. To compel the insurers and the Plaintiff to appoint the same firm of solicitors will present practical problems. As between the Plaintiff and his insurers, the former has hardly any bargaining power. The policy of insurance usually gives the insurers a right to have conduct of the suit including the choice of solicitors. If the Plaintiff attempts to challenge that right, the likely consequence is that the insurers will repudiate all liability to indemnify the Plaintiff and the latter will be left in the cold.
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> 8. If the Plaintiff is compelled to appoint the insurers' solicitors to act for him in his own suit, certain practical problems may arise as follows:-
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> a. The insurers' solicitors may not wish to act for the Plaintiff.
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> b. The insurers' solicitors may require payment of a sum as deposit which the Plaintiff may find prohibitive.

c. The insurers' solicitors' professional charges may not be agreeable to by the Plaintiff.

d. The insurers' solicitors may at the personal level experience difficulty in acting for the Plaintiff. After all, it is to be borne in mind that in such circumstances, the Plaintiff is deprived of his choice of solicitors.

e. The Plaintiff will in all likelihood have to pay the repair bill in full to his repairers first if he is compelled to appoint the insurers' solicitors to act in his recovery action. Very often, the practice in the industry is that a motor repairer will allow a Plaintiff (*sic*) defer payment of the repair bill until after the outcome of the suit if he appoints a firm of solicitors recommended by his motor repairer.

9. At the right juncture, the Plaintiff herein will apply for both suits to be consolidated. One of the prayers sought will be that one suit will be tried and parties in the other suit will be bound by the outcome of the 1st Suit insofar as liability is concerned. As to which firm of solicitors will have conduct of the trial, it will be the solicitors on record for the Suit which is being tried. In any case, subject to the leave of the Trial Judge, solicitors acting for any of the interested parties may rise to ask questions. Because the issue of liability is the same, the Plaintiff's solicitors and the insurers' solicitors will for practical purpose co-ordinate their strategy when it comes to which question to ask and to put to witnesses. But when it comes to quantum, it is only logical that the insurers' solicitors will conduct the case when it comes to challenging the claim of the other side and likewise, the Plaintiff's solicitors will have conduct of the case when it comes to proving the Plaintiff's damages. The situation is not very different if one litigant have 2 lawyers from the same firm acting for him at the trial.

10. As for costs, the Trial Judge will at the end of the hearing be fully appraised of the circumstances of the case and will be in the best position to decide how to make appropriate orders as to costs. In this respect, having two firm of solicitors acting for the Plaintiff and his insurers will not result in prejudice because even if there had been one suit and the Plaintiff had (*sic*) make a counterclaim and assuming that both parties succeed in part, and which is usually the case in a road traffic accident claim, the Trial Judge will usually award damages and costs to both litigants in the proportion of his finding on liability.

11. This is in fact how business has been conducted in the Subordinate Courts all this while. It is very common to have two related suits arising from the same accident coming up for a CDR or PTC before a Magistrate/District Judge with 4 different solicitors addressing the Court. This is a very accepted and prevalent practice and the Subordinate Courts have never encountered any problems when they order costs to follow the event in the respective related suits.

12. We humbly submit that the Plaintiff and his insurers be allowed to appoint their own solicitors to represent them. This will effectively eliminate the potential problem of a solicitor facing a conflict of interest dilemma and will also redress the Plaintiff's lack of bargaining power over the choice of solicitors to represent him in his own suit. Any injustice, if any, with respect of costs, can be easily redressed by making an appropriate order as to costs if the Trial Judge should see fit. So far, this practice of allowing insurers and Plaintiffs to be represented by their own preferred solicitors has worked very well and we humbly ask this Honourable Court not to disturb the same.'

16. Ms Wong stressed that this was not a situation in which Mr Liew was attempting to make

claims arising from the same accident by way of two separate actions. In the 1st Action, he is the defendant. It is only in the 2nd Action that he is the plaintiff. Those were not the facts in *Buckland v Palmer* or in the other cases which Mr Tan was relying on.

17. Ms Wong submitted that *Henderson v Henderson* and the case of *Talbot* and *Yat Tung* were considered by the Singapore Court of Appeal in *Ng Chee Hong & another v Toh Kouw and another* (Civil Appeal No 6 of 1999). The Court of Appeal accepted the concept of res judicata in its strict sense and in its wider sense, as enunciated by Stuart-Smith LJ in *Talbot* at p 296:

> 'The first relates to those points which were actually decided by the court; this is res judicata in the strict sense. Secondly, those which might have been brought forward at the time, but were not. The second is not a true case of res judicata but rather is founded upon the principle of public policy in preventing multiplicity of actions, it being in the public interest that there should be an end to litigation; the court will stay or strike out the subsequent action as an abuse of process ….'

18. Notwithstanding the doctrine of res judicata in its wider sense, the Court of Appeal allowed the same plaintiffs there to commence a second action based on a cause of action arising from the same transaction as in the first action.

19. I should elaborate. In that case, the plaintiffs had contracted on 16 July 1997 to sell their HDB flat to the defendants for $568,000. The defendants were required under the contract to pay a deposit of $5,000. Two days after signing the contract, the defendants informed the plaintiffs that they did not wish to proceed with the purchase or to pay the deposit.

20. The plaintiffs then commenced an action on 14 August 1997 in the Magistrate's Court to recover the $5,000 deposit. On 23 October 1997, they obtained summary judgment. In the meantime, the plaintiffs had on 5 October 1997 re-sold the flat for $535,000 to another purchaser.

21. On 27 October 1997, the plaintiffs' solicitors demanded payment of $30,500 which was supposed to include the plaintiffs' loss of profit and a property agent's commission. As the defendants failed to pay, the plaintiffs commenced a fresh action in the District Court.

22. The defendants applied to strike out the fresh action and succeeded before a deputy registrar. The plaintiffs' appeal to a District Court was allowed but the defendants' appeal to the High Court was in turn allowed. The plaintiffs' appeal to the Court of Appeal was allowed because at the time of the first action, the plaintiffs had suffered no loss. Even if they had already suffered a loss, a question might arise as to whether they had mitigated their loss. This could not be determined at the time when the plaintiffs obtained summary judgment.

23. It seemed to me that in the case of *Ng Chee Chong*, the same plaintiffs were suing twice on the same transaction. This was a fact different from the case before me, as Ms Wong herself had stressed. Secondly, the loss of profit had not yet occurred at the time of the first action. Accordingly, it was not really on point.

24. As for the case of *Talbot*, Ms Wong distinguished it by pointing out that in that case, the plaintiff had in the earlier action commenced a third party proceeding against the council. That amounted to an action by the plaintiff against the council which at the time was confined to a claim for contribution towards damages for the injury suffered by the passenger (in the plaintiff's vehicle). Thus, when the plaintiff subsequently commenced another action against the council to claim damages for his own injury, the plaintiff was precluded from doing so.

25. Ms Wong then sought to use the case of *Talbot* to support her argument that Mr Liew was entitled to commence a separate action. She relied on a different part of the judgment of Stuart-Smith LJ where, at p 298B he said,

> '*Application of the rule in this case*
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> There can be no doubt that the plaintiff's personal injury claim could have been brought at the time of Miss Bishop's action. It could have been included in the original third party notice issued against the council (R.S.C., Ord.16, r.1(b)(c)); it could have been started by a separate writ and consolidated with or ordered to be tried with the Bishop action: Ord.4, r.9. ….'

26. Ms Wong also referred to O 15 r 2(1) of the Rules of Court which states:

> '2(1) Subject to Rule 5(2), a defendant in any action who alleges that he has any claim or is entitled to any relief or remedy against a plaintiff in the action in respect of any matter (whenever and however arising) may, instead of bringing a separate action, make a counterclaim in respect of that matter; and where he does so he must add the counterclaim to his defence.'

She submitted that this rule suggested that a litigant has an option: either to make his claim by way of a fresh action or by way of a counterclaim in an existing action.

27. She further submitted that O 4 r 1 on the consolidation of proceedings, contemplates the very situation before me in which the same opposing parties seek relief in respect of the same incident.

My Decision

28. I accepted Ms Wong's submission that it was important to bear in mind that Mr Liew was not the plaintiff in the 1st Action. More importantly, his claim for damages could not be made in SBS' action, except by way of counterclaim or a fresh action.

29. The case of *Buckland v Palmer* was one in which a second action was being maintained by the same plaintiff, although at the behest of his insurers, and hence it failed.

30. As for the case of *Yat Tung Investment Co Ltd* ('Yat Tung'), the facts there were quite different also. Dao Heng Bank Ltd had sold a property mortgaged to it to Yat Tung who in turn borrowed money from the bank on the security of that property. Yat Tung defaulted on the payment of interest under the mortgage and the bank exercised its right as mortgagee and sold the property, a second time, to another purchaser. Yat Tung brought an action against the bank alleging that the first sale to Yat Tung was a sham and its mortgage was a nullity. The bank denied that that sale was a sham and counterclaimed for its loss on the second sale. The court dismissed Yat Tung's claim and allowed the bank's counterclaim. One month after that, Yat Tung brought another action against the bank and the second purchaser claiming that that sale was fraudulent and that the sale price was too low. The bank and the second purchaser applied to strike out Yat Tung's claim and succeeded before the judge, the Full Court of the Supreme Court of Hong Kong and the Privy Council. It was on these set of facts that the Privy Council said that it saw no reason why a defence impugning the bona fides of the second sale could not have been pleaded as a counterclaim to the bank's counterclaim.

31. As can be seen, in the bank's counterclaim for its loss, Yat Tung could and should have made its allegation that the sale to the second purchaser was fraudulent and the sale price was too

low. It did not.

32. While the issue of liability as between SBS and Mr Liew is very much part of the 1st Action, the quantum of Mr Liew's damages is not. Mr Liew will be bound by the court's decision on liability in the 1st Action but any decision in the 1st Action cannot bind him on the quantum of his claim because that is not an issue in the 1st Action.

33. The decision in *Yat Tung* is not authority for the proposition that Mr Liew must make his claim by way of counterclaim. Indeed, as submitted by Ms Wong, he can even wait until the outcome of the 1st Action and then commence his action for his damages, although this is not a course any court would recommend in the absence of special reasons for waiting.

34. As for the case of *Talbot*, on which Mr Tan placed particular emphasis, it is important to bear in mind the facts there. The headnote of the report for that case states:

> 'In October 1984 the plaintiff [Mr Talbot] was driving a motor car at night on a wet road. When overtaking another car the plaintiff's vehicle struck an expanse of water on the offside of the road, went out of control and hit a tree. The plaintiff and his passenger suffered severe injuries. The passenger began proceedings against the plaintiff. His insurers appointed solicitors to act on his behalf who, without informing the plaintiff, issued a third party notice against the council as local highway authority, alleging nuisance on the highway and negligence. The claim was confined to one for contribution as between joint tortfeasors and did not include any claim for damages in respect of the plaintiff's own injuries. The passenger joined the council as second defendant in her action. At the trial of that action in 1989 she succeeded in her claim, blame for the injuries she sustained being apportioned two-thirds against the plaintiff and one-third against the council. In 1990, after the expiry of the limitation period, the plaintiff issued a writ against the council in which he claimed damages for the injuries which he had sustained in the accident. Otton J., deciding the plaintiff was prima facie estopped by the doctrine of res judicata from bringing his action but that special reasons, namely, the serious nature of his injuries, the negligent conduct of his case by solicitors formerly acting for him and the council's knowledge of his case, permitted the plaintiff to pursue his action. However, he declined to make a direction pursuant to section 33 of the Limitation Act 1980 that the provisions of section 11 of that Act should not apply to the action, with the result that the plaintiff's action was statute-barred.
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> On the plaintiff's appeal, on which the council contended that the judge had been wrong to hold that the plaintiff's action was not barred as res judicata:-
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> *Held*
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> , dismissing the appeal, that there was no reason why the principles of the doctrine of res judicata should not apply without limitation in personal injury actions; that since the plaintiff's claim against the council arose out of substantially the same facts as the cause of action in respect of which the passenger's claim had been made, it should have been included in the third party proceedings in the passenger's action; ….'

35. I was of the view that Ms Wong was correct in distinguishing the *Talbot* case from the case before me. Mr Tan's reliance on the passage from the judgment of Stuart-Smith LJ, which I have quoted in para 10 above, was out of context.

36. However, I was also of the view that the passage from the judgment of Stuart-Smith LJ relied on by Ms Wong, which I have quoted in para 25 above did not assist her arguments. That

passage only means that Mr Talbot could and should have included in his claim for contribution, a claim for his own injury against the council in his original third party notice or made both claims against the council by way of a separate action. However, if the latter, this would mean that in the first action, the passenger was the plaintiff and Mr Talbot was the defendant and in the second action, Mr Talbot would be the plaintiff and the council would be the defendant. Such facts were different from those before me.

37. As for *Henderson v Henderson*, it did not assist Mr Tan as the facts there were also different. The issues which the plaintiff in the second action wanted to raise had been resolved in the first action. Hence, its concern about the multiplicity of proceedings was not in the context of the facts before me.

38. The policy argument that multiplicity of proceedings should be avoided precludes a litigant from raising fresh claims from the same incident in a separate action when he could and should have included them in an earlier action. That policy has never been extended to preclude a defendant such as Mr Liew from bringing his claim as plaintiff by way of a separate action.

39. It should also not be forgotten that a counterclaim is in substance a separate action in any event. By arguing that Mr Liew must bring his claim by way of a counterclaim, Mr Tan was implicitly acknowledging that that claim could not be resolved in SBS' action alone.

40. As for O 15 r 2(1), I agreed that it is an enabling provision under which a defendant in an existing action may make a counterclaim in that action instead of bringing a separate action. However, it does not compel the defendant to make his claim by way of a counterclaim.

41. As regards the question of consolidation, O 4 r 1 states:

> '**Consolidation, etc., of causes or matters (O.4, r.1)**
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> 1.(1) Where two or more causes or matters are pending, then, if it appears to the Court -
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> (a) that some common question of law or fact arises in both or all of them;
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> (b) that the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions; or
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> (c) that for some other reason it is desirable to make an order under this Rule,
>
> the Court may order those causes or matters to be consolidated on such terms as it thinks just or may order them to be tried at the same time or one immediately after another or may order any of them to be stayed until after the determination of any other of them.'

42. I refer to the White Book 1999 para 4/9/2 where it states:

> 'There may, however, be further circumstances which will militate against an order [of consolidation] being made. Two actions cannot be consolidated where the plaintiff in one action is the same person as the defendant in another action, unless one action can be ordered to stand as a counterclaim or third party proceedings in another action.'
> [Emphasis added.]

43. Yet, Ms Wong was trying to avoid making Mr Liew's claim by way of a counterclaim.

44. As for Mr Tan's point that it is 'generally impossible to consolidate actions in which different solicitors have been instructed', the case of *Lewis v Daily Telegraph (No 2)* [1964] 2 QB 601, which is cited in the White Book for this proposition, does not quite go as far.

45. It is important to bear in mind the facts there which I summarise from the headnote of the report.

46. There, two national newspapers had published similar articles stating that the police were inquiring into the affairs of a company of which L was then managing director and chairman. The company and L each commenced an action for libel against each of the publishers of the newspapers resulting in four separate actions. Subsequently, on L's application, his two actions were consolidated with those of the company so that the four actions became two.

47. Both actions were tried. In the first, L was awarded 25,000 damages and the company 75,000; in the second a different jury awarded L 17,000 and the company 100,000. The newspaper publishers appealed to the Court of Appeal, which set aside those awards on the grounds of mis-direction by the judge and excessive damages, and ordered a new trial in both actions. That decision was affirmed by the House of Lords. The plaintiffs were ordered to pay the costs of the appeals to the higher courts, while the costs of the abortive trials were to abide the result of their retrial.

48. After the Court of Appeal had given its decision the company went into liquidation and disputes arose between L and the liquidators as to their respective liability inter se for the costs and also as to the company's claim for special damage which L was unable to support. The solicitors who had hitherto acted for both plaintiffs removed themselves from the record. L then instructed solicitors to represent him separately in the actions, and the liquidator did likewise; those two solicitors gave notice of change and were placed on the record as the respective solicitors for the two plaintiffs.

49. On an application by the newspaper publishers asking, inter alia, for the two actions to be consolidated into a single comprehensive action, L applied to deconsolidate the two actions so that the original four actions should re-emerge. The master granted the newspaper publishers' application, consolidated the two actions, and refused L's application for deconsolidation. L appealed to the judge in chambers, who dismissed his appeal.

50. I now quote from the headnote:

> 'On appeal by L, who sought deconsolidation or, alternatively, a joint trial on liability and separate trials on damages:-
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> Held, dismissing the appeal, (1) that, although in a proper case the court could in effect order the deconsolidation of a consolidated action by suitable use of the powers contained in R.S.C., Ord.15, rr 5, 8, deconsolidation was not appropriate to the present case where, there being no conflict of interest between the plaintiffs, it was manifestly more convenient to resolve all the issues in dispute (which were similar) in a single trial by a single tribunal; and that, accordingly, there would be no deconsolidation or separate trials on damages.
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> (2) That co-plaintiffs in a consolidated action were not entitled to separate legal representation without leave of the court, so that the action as it existed was not properly constituted; and, there being no reason for granting leave for separate representation, the action could not proceed for trial until a single solicitor was placed on the record for both plaintiffs.'

51. As can be seen, the concern of the English Court of Appeal in that case was not so much whether consolidation could be ordered. Indeed it was ordered. The concern was whether there should be separate representation for each of the two plaintiffs. That is a different point.

52. It seemed to me that the 2nd Action before me can be ordered to stand as a counterclaim in the 1st Action. The fact that there are different solicitors acting for Mr Liew should not preclude this. If necessary, directions can be given about these two firms of solicitors.

53. Alternatively, aside from consolidation, it is possible for directions to be given for the 2nd Action to be heard at the same time or immediately after the 1st Action, see again O 4 r 1. I do not accept that there would be a risk of conflicting decisions. As I have said, Mr Liew will be bound by the decision of the court in the 1st Action on the issue of liability.

54. However, I accepted that more costs will be incurred by a separate action but that is a separate matter which can be addressed by the trial court. It does not preclude Mr Liew from bringing the 2nd Action.

55. Accordingly, I dismissed SBS' appeal with costs.

A Different Concern

56. There was one other matter that caused me concern. This was the reason given by Mr Liew for bringing his claim by way of a fresh action. I was not aware of the alleged practice in the Subordinate Courts to allow two firms of solicitors to represent the insured as defendant in one action and as plaintiff in the second action. Neither am I aware of such a practice in the High Court. The practice of having related actions, where there are different solicitors but not all litigants are the same, coming up before the same court is not necessarily the same as the situation which Ms Wong was advocating.

57. I was not entirely convinced by all the reasons given by Ms Wong for having two firms of solicitors acting for Mr Liew although I saw merit in some of the reasons. However, as that was not the issue before me, I did not make any ruling thereon and left it to SBS to take the point, if it so wished, before trial or at the trial.

Sgd:

WOO BIH LI

JUDICIAL COMMISSIONER