Manas Kumar Ghosh
v
MSI Ship Management Pte Ltd and others

[2020] SGHC 179

High Court — Suit No 670 of 2018 (Registrar's Appeals Nos 273 and 274 of 2019)
Aedit Abdullah J
9 January, 26 February, 4 March 2020

Civil Procedure — Pleadings — Striking out

Civil Procedure — Summary judgment — Determination of question of law or the construction of a document

Res Judicata — Extended doctrine of res judicata

27 August 2020

Aedit Abdullah J:

Introduction

1 This grounds of decision concerns appeals against the decision of the Assistant Registrar (the "AR") dated 27 August 2019 determining an issue under O 14 r 12 of the Rules of Court (Cap 322, R 5, 2014 Ed) (the "ROC") and striking out the action under O 18 r 19 of the ROC.[1] I dismissed these appeals

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[1] HC/SUM 1250/2019; HC/SUM 1258/2019; Certified Transcript dated 27082019 ("AR Hearing").

(the "RAs"), and the appellant now pursues further appeals to the Court of Appeal.[2] I set out my reasoning below.

Background

2 On 2 July 2015,[3] the plaintiff, who was at the time the Third Engineer working on board the *X-Press Makalu* (the "vessel"), of the Port of Singapore,[4] suffered injuries while working on board the vessel.[5] It is not contested that at the time the injuries were suffered, the plaintiff had been acting under the instructions of the Second Engineer of the vessel. The plaintiff's hands were amputated following the accident.[6]

3 In 2016, the plaintiff commenced HC/ADM 257/2016 ("the 2016 suit") against the third defendant, which was at the material time the owner of the vessel.[7] This claim was eventually settled and a settlement agreement dated 24 January 2018 was entered into between the plaintiff and the third defendant.[8] The terms of the settlement agreement are sealed. Subsequent to the settlement agreement being entered into, the plaintiff discontinued the 2016 suit.[9]

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2 CA/CA 84/2020; CA/CA 85/2020.

3 Statement of claim dated 18 January 2019 ("SOC") at [8]; Defence dated 27 March 2019 ("Defence") at [10].

4 SOC at [1]; Defence at [8].

5 SOC at [1]; Defence at [6].

6 SOC at [10]; Plaintiff's Written Submissions ("PWS") dated 3 January 2020 at [2(a)].

7 Statement of Claim in HC/ADM 257/2016 at [1].

8 Defence at [2].

9 Notice of Discontinuance filed on 7 February 2018 in relation to HC/ADM 257/2018.

4 Barely six months after the settlement agreement, the plaintiff commenced the present suit against the first and second defendants for the injuries he had suffered as described at [2] above.[10] The first defendant was, at the time of the plaintiff's accident, the ship manager of the vessel.[11] The second defendant was, from December 2013 until 15 June 2015, the ship manager of the vessel.[12] Both the first and second defendants had been engaged by the third defendant as ship managers for the vessel. By virtue of HC/ORC 1159/2019 dated 19 February 2019, the third defendant was granted leave to intervene as a defendant in this suit.

5 On 12 March 2019, all three defendants filed an application in HC/SUM 1258/2019 for the determination of a question of the construction of a document under O 14 r 12 of the ROC. The question for determination presented in the summons was simply as follows:[13]

> Whether the 1st and 2nd Defendants are 'agents' as specified under Clauses 1.6 and 2.1 of the Settlement Agreement …

6 Also on 12 March 2019, all three defendants filed a further application in HC/SUM 1250/2019 under O 18 r 19 of the ROC for the statement of claim filed by the plaintiff to be struck out and the action accordingly dismissed. The application for striking out was founded upon the following bases, that the plaintiff's claim:[14]

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10 HC/S 670/2018 filed on 2 July 2018.

11 SOC at [3]; Defence at [6].

12 SOC at [2]; Defence at [6].

13 HC/SUM 1258/2019 at Relief [1].

14 Summons under O 18 r 19 in HC/SUM 1250/2019 at [1].

(a) disclosed no reasonable cause of action (O 18 r 19(1)(*a*) of the ROC);

(b) was scandalous, frivolous or vexatious (O 18 r 19(1)(*b*) of the ROC);

(c) was otherwise an abuse of the process of the Court (O 18 r 19(1)(*d*) of the ROC); and

(d) should be struck out pursuant to O 92 r 4 of the ROC on the exercise of the inherent jurisdiction of the Court

7 Both applications were heard together by the AR on 27 August 2019. The AR found for the defendants on both applications, holding that the first and second defendants were agents, and striking out the statement of claim. The plaintiff appealed. For completeness, I note that RA 273 of 2019 relates to HC/SUM 1250/2019, while RA 274 of 2019 relates to HC/SUM 1258/2019.

The Appellant's Arguments

8 Before me, the plaintiff argued that the first and second defendants were independent contractors, and not agents, in the provision of technical management services to the third defendant. This was said to follow from the proper construction of the service management agreement between each of the first and second defendants on one hand, and the third defendant on the other, the International Safety Management Code (2002 Ed) published by the International Maritime Organisation (the "ISM Code"), and case law. It was also argued that the extended doctrine of *res judicata* did not apply to warrant the action being struck out, one of the reasons being that the assessment of

damages should not take into account payments with no admission of liability.[15] Further, and raised for the first time on appeal, the plaintiff argued that the question outlined at [5] above was unsuitable for summary determination as the question of agency required a factual determination of the degree of control exercised over the first and second defendants by the third defendant, and thus entailed a material dispute of fact.[16]

9 The crux of the plaintiff's argument was that the first and second defendants were not included within the ambit of the settlement agreement, and that there was no release from liability for independent contractors under that agreement.[17]

The Respondents' Arguments

10 The defendants sought to uphold the AR's decision in relation to both summonses. They contended that the first and second defendants are agents within the meaning of the settlement agreement, specifically under Clauses 1.6 and 2.1, and that the plaintiff is thus precluded from bringing the present action. The RAs should therefore be dismissed, and the plaintiff's action struck out.

11 The defendants further argued that an agency relationship existed between each of the first and second defendants on the one hand as managers of the vessel, and the third defendant as owner of the vessel on the other, through the Baltic and International Maritime Council ("BIMCO") Standard Ship

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15 PWS at [7].

16 PWS at [6(i)(f)].

17 Affidavit of Manas Kumar Ghosh dated 27 March 2019 in HC/SUM 1250/2019 from [7] to [13].

Management Agreement, SHIPMAN 2009.[18] The third defendant had engaged the first defendant to provide ship management services pursuant to a SHIPMAN 2009 standard form contract dated 5 June 2015 entered into by both parties.[19] Before the third defendant's engagement of the first defendant, it had previously engaged the second defendant to provide similar services pursuant to a SHIPMAN 2009 standard form agreement as well.[20]

12 As the first and second defendants were covered under the settlement agreement, they were discharged by the plaintiff from any liability. Bringing the claim despite such discharge was an abuse of process, frivolous, and vexatious, and should thus be struck out.[21] Moreover, no cause of action was made out against the second defendant, which was not even the ship manager at the time of the plaintiff's accident.[22]

The Decision

13 I was satisfied that the RAs should be dismissed. Taking first the appeal in respect of O 14 r 12 of the ROC (RA 274 of 2019), I found that the first and second defendants fell within the use of the term "agent" in the settlement agreement because of the clauses governing their roles under the SHIPMAN 2009 contracts. Even if the first and second defendants were independent contractors in certain senses, as contended for by the plaintiff, that did not *ipso facto* preclude them from being agents as well, and they were such in the context of the settlement agreement and the contracts.

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18 DWS at [36] to [46].

19 DWS at [36] to [37].

20 DWS at [36] to [37].

21 DWS at [62].

22 DWS at [119].

14 That being my conclusion on the O 14 r 12 matter, the plaintiff was precluded from suing outside the settlement agreement, which would amount to an abuse of process. I also found that the plaintiff was similarly precluded by operation of the extended doctrine of *res judicata* as the claims against the first and second defendants should have been raised in the 2016 suit, but the plaintiff did not do so.

15 Both appeals in RAs 273 and 274 were therefore dismissed.

Analysis

Determination under O 14 r 12 of the ROC

16 I found that the issue set out at [5] above should be determined, and that the appropriate determination was that the first and second defendants were, for the purposes of the settlement agreement, agents of the third defendant.

Whether such determination was appropriate

17 O 14 r 12 of the ROC allows for the determination of a question of law or construction of a document without trial. It provides that:

> (1) The Court may, upon the application of a party or of its own motion, determine any question of law or construction of any document arising in any cause or matter where it appears to the Court that –
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> (*a*) such question is suitable for determination without a full trial of the action; and
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> (*b*) such determination will fully determine (subject only to any possible appeal) the entire cause or matter or any claim or issue therein.
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> […]

18 The authors of *Singapore Civil Procedure* Vol 1 (Sweet & Maxwell, 2020 Ed) (*Singapore Civil Procedure 2020*) make clear at [14/12/4] that it is not the case that an application under O 14 r 12 of the ROC should only be made if the decision would finally determine the entire cause of matter. This point is buttressed by clear authority to that effect in *Payna Chettiar v Maimoon bte Ismail and others* [1997] 1 SLR(R) 738 at [34], and *Beam Technology (Mfg) Pte Ltd v Standard Chartered Bank* [2003] 1 SLR 597 at [8]. Thus, a determination by the court may be made if it would save time and costs, even if it does not dispose of the entire dispute: see also *Ong & Co Pte Ltd v Ngu Tieng Ung* [1999] 4 SLR 379 at [8]. The overriding consideration in deciding when the discretion will be exercised is whether summary determination on the facts of the case would fulfil the underlying purpose of O 14 r 12 of the ROC, to save time and costs for the parties: *TMT Asia Ltd v BHP Billiton Marketing AG (Singapore Branch) and another* [2015] 2 SLR 540 at [32]; *ANB v ANF* [2011] 2 SLR 1 at [61].

19 That said, factual disputes would not be suitable for an application under O 14 r 12 of the ROC. In *The "Chem Orchid" and other appeals and another matter* [2016] 2 SLR 50, the Court of Appeal observed at [60] that:

> … We underscored the fact that the process under O 14 r 12 could only be invoked if there were no factual disputes relating to the point of law in question.

20 I found that there were no material factual disputes relating to the instant application, and that the question in the present case was suitable for determination. The question was simply whether the first and second defendants were agents for the purposes of the settlement agreement. It was a matter of the construction of the documents, and in particular the contracts entered into between each of the first and second defendants and the third defendant. No trial

of facts was necessary to resolve that question. I was also satisfied that such a determination would determine the proceedings, or at least a substantial issue therein, as it would potentially give rise, as it eventually did, to a striking out. The determination would therefore save time and costs, and would fulfil the underlying purpose of O 14 r 12 of the ROC.

21 I noted the plaintiff's argument that the issue, properly construed, was whether the first and second defendants were independent contractors, which was an inquiry raising factual questions to be resolved. I did not accept this characterisation of the issue. Whether the first and second defendants were independent contractors was a separate question from whether they should be regarded as agents under the settlement agreement. It was irrelevant whether these defendants were independent contractors under general law: what was solely in issue was whether they fell within the term "agents" as used in the settlement agreement. Determining that issue by concluding that they were agents under the settlement agreement would avoid the need for determining whether they were independent contractors. If, on the other hand, they were not found to be agents by construction of the applicable contracts, then and only then would the question of whether they were independent contractors need to be determined, among other possible issues.

22 Furthermore, as rightly argued by the defendants, the plaintiff has not made anything more than a bare assertion that the first and second defendants were independent contractors. It is not enough in resisting an application under O 14 r 12 of the ROC to merely assert that factual issues would arise. Sufficient material should be placed before the Court so that an assessment can be made whether the need for evidence to be given and factual weighing is real and not merely illusory. Crucially, there is nothing in the plaintiff's pleadings which illustrates a factual dispute that precludes the operation of O 14 r 12 of the ROC,

and the plaintiff makes no averments in its pleadings as to the degree of control (or lack thereof) exercised by the third defendant over the other two defendants. Thus, even on his own case that the degree of control exerted is the central consideration in determining whether someone is an agent, the plaintiff has not raised any factual dispute in his pleadings. It is trite, as the Court of Appeal has established in *Olivine Capital Pte Ltd and another v Chia Chin Yan and another matter* [2014] 2 SLR 1371 at [41] and [42] in the context of an application under O 14 r 12 of the ROC, that a party is bound by his pleadings in O 14 proceedings under the ROC.

23 I was therefore unpersuaded by the plaintiff's argument, which I reiterate was raised for the first time on appeal, that the question outlined at [5] above was not suitable for determination.

The determination of the issue

24 Turning to the determination of whether the first and second defendants were agents of the third defendant within the ambit of the settlement agreement, the defendants argued that they were. As noted above, the plaintiff argued that the defendants were independent contractors, and were thus outside the scope of the settlement agreement

25 I accepted the arguments of the defendants that the first and second defendants were covered by the settlement agreement. This is illustrated by the applicable contracts between the defendants, which treated the first and second defendants as agents of the third defendant ship-owner.

26 The relevant governing agreements between the each of the first and second defendants, and the third defendant, incorporated the SHIPMAN 2009 standard terms. Under these contracts, the management services provided by the

first and second defendants were governed by the SHIPMAN 2009 standard terms, and cl 3 of SHIPMAN 2009 specified that the managers carried out the services provided in respect of the vessel as agents for and behalf of the owners. Clause 3 reads:[23]

> **3. Authority of the Mangers** [*sic*]
>
> Subject to the terms and conditions herein provided, during the period of this Agreement the Managers shall carry out the Management Services in respect of the Vessel as agents for and on behalf of the Owners. The Managers shall have authority to take such actions as they may from time to time in their absolute discretion consider to be necessary to enable them to perform the Agreement Services in accordance with sound ship management practice, including but not limited to compliance with all relevant rules and regulations.

This notion of the managers acting as agents for the owners was also reiterated by other clauses such as cl 8(a), which dealt with the managers' obligations and which read:[24]

> **8. Managers' Obligations**
>
> (a) The Managers undertake to use their best endeavours to provide the Management Services as agents for and on behalf of the Owners in accordance with sound ship management practice and to protect and the promote the interests of the Owners in all matters relating to the provision of services hereunder.

27 The explanatory notes issued by BIMCO at p 5 support this construction of the clauses cited:[25]

> …
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> The provisions of the first sentence remain unchanged from the previous edition. They establish the fundamental principle of SHIPMAN that it is an agency agreement with the managers

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23 Muthusamy's 3rd Affidavit at p 58.

24 Muthusamy's 3rd Affidavit at p 62.

25 Defendants' Bundle of Authorities vol 1 dated 3 January 2020 ("DBOA 1") at Tab 8.

> carrying out the functions specified in the agreement as agents for and on behalf of the owners.
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> …

28 It is clear from the above-cited provisions and explanatory note that a relationship of agency did arise as between each of the first and second defendants, and the third defendant, as a result of their contracts with each other. The first and second defendants were, according to the plain wording of the relevant clauses, providing the "Management Services as agents for and on behalf of the Owners".

29 The ambit of "Management Services" as provided for in cl 1 of SHIPMAN 2009 is:

> … the services specified in SECTION 2 – Services (Clauses 4 through 7) as indicated affirmatively in Boxes 6 through 8, 10 and 11, and all other functions performed by the Managers under the terms of this Agreement

30 In the SHIPMAN 2009 contract entered into between the first defendant and the third defendant dated 5 June 2015, boxes 6 and 7 were filled in the affirmative, meaning that "Management Services" for the purposes of that particular agreement would include both technical management under cl 4, and crew management under cl 5, of SHIPMAN 2009.[26] Clause 4 of SHIPMAN 2009 provides for the provision of technical management, and includes, *inter alia*, ensuring compliance with the ISM Code, ensuring that the vessel complies with the requirements of the law of the Flag State, and arranging and supervising dry dockings, repairs, alterations, and the maintenance of the vessel.[27] Clause 5 of SHIPMAN 2009 provides for the provision of crew management, and

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[26] Muthusamy's 3rd Affidavit at p 56.

[27] Muthusamy's 3rd Affidavit at p 59.

includes, *inter alia*, selecting and engaging the crew, ensuring that the applicable requirements of the law of the Flag State in respect of rank, qualification, and certification of the crew are met, and providing for the training of the crew.[28] All of these functions under cll 4 and 5 of SHIPMAN 2009 would have been carried out by each of the first and second defendants as agents of the third defendant under their respective contracts with the third defendant.

31 As argued by the defendants, all three defendants have never disputed that position *inter se*. As observed in *The Law of Agency* (Academy Publishing, 2nd Ed, 2017) from [02.011] to [02.014], the crucial issue is whether the person purported to be an agent has the authority to affect the legal relations of his principal as a result of the mutual assent of both parties. In this regard, the distinction between employees and independent contractors is not critical. Rather, both servants and independent contractors may or may not have authority conferred on them to affect the legal relations of another. Where such authority is granted, they are agents in addition to being servants or independent contractors. Applying this reasoning to the facts, I took note of the fact that there has never been any dispute between the first and third defendants that the first defendant was acting as an agent of the third defendant. When the plaintiff first commenced proceedings against the third defendant in the 2016 suit, there was also no suggestion at all by the third defendant that it should not be liable and that the first defendant, as an independent contractor, was the proper defendant. On the contrary, the third defendant had never indicated that the first defendant was not its agent despite the plaintiff's contract of employment having only been with the first defendant and not the third defendant.[29]

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28 Muthusamy's 3rd Affidavit at p 59.

29 Statement of Claim in HC/ADM 257/2016 at [2].

32 As against this, the plaintiff argued that the first and second defendants were independent contractors and that this precluded them from being "agents" for the purposes of the settlement agreement. The plaintiff argued that cl 3 of the SHIPMAN 2009 agreement entered into between each of the first and second defendants (see [26] above), and the third defendant, had to be read subject to cll 4 and 8(b).[30] Specifically, cl 4(b) provides that the ship managers have to ensure compliance with the ISM Code, while cl 8(b) stipulates that the managers shall, *inter alia*, "[assume] the responsibility for the operation of the Vessel and [take] over the duties and responsibilities imposed by the ISM Code".[31] It was further argued that cl 9(b)(i) deems the ship manager as the "company" for the purposes of compliance with the ISM Code and the International Ship and Port Facility Security Code (the "ISPS Code").[32] The plaintiff thus argued that the services rendered were of the defendants' own account for compliance with these codes, and were therefore the actions of independent contractors.

33 I did not accept that these clauses cited by the plaintiff were sufficient to displace the construction that the settlement agreement covered the first and second defendants. The clauses in question were not such in their strength to exclude the operation of cl 3, and in any event did not account for the clear wording of cl 8(a) (see [26] above). If anything, reading the clauses together indicates that the purpose of the references to the ISM and ISPS Codes is to impose standards for the ship managers to meet. Critically, it did not follow that such references served to specify the contractual relationship between the parties. It was entirely possible for a ship manager to be responsible for

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30 PWS at [6].

31 Muthusamy's 3rd Affidavit at pp 59 and 62.

32 Muthusamy's 3rd Affidavit at p 62.

complying with the ISM and ISPS Codes and to be the "company" identified as being responsible for such compliance, and still simultaneously be the ship-owner's agent. If any reconciliation or harmonious reading was needed, for the purposes of these proceedings, the clauses governing the contractual relationship between the parties would have to be given priority over clauses merely stipulating one party's compliance obligations.

34 Again, as I have noted above, it was immaterial that the first and/or second defendants would otherwise have been independent contractors at general law. The contractual clauses effectively deem the first and second defendants as agents for the third defendant in the execution of their duties as ship managers, and this forms part of the background that has to be considered in construing the settlement agreement.

35 Turning to the wording of the settlement agreement, it is clear that it covered not just the third defendant, but also agents of the third defendant.

36 No special definition of an "agent" was used in the settlement agreement, and there is nothing in the express terms of agreement excluding the first and second defendants. The contractual agreement between the defendants was plain. The fact of the matter is that the parties did not specify in the settlement agreement any definition of who would count as an agent for the third defendant. That left open the issue, and on a plain reading of the terms, any person in an agency relationship with the third defendant would count as an agent. An agency relationship would arise through the appropriate contractual relationship with the third defendant, and in this case the SHIPMAN 2009 standard terms incorporated by the parties were unambiguous about the nature of the relationship between ship manager and owner. It was thus clear that each of the first and second defendants had been agents for the third defendant.

37 I note for completeness that no evidence was raised as to the negotiations underpinning the settlement agreement which showed that the agreement was meant to exclude the first and second defendants. In any event, the scope for material evidence from negotiations to contour contractual interpretation is circumscribed, and requires that the evidence be relevant, reasonably available to all the contracting parties, and relate to a clear and obvious context: *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 from [125] to [129]. Moreover, the Court of Appeal in *Xia Zhengyan v Geng Changqing* [2015] 3 SLR 732 at [69] expressly left open the question of whether or not there should be a principle that evidence of prior negotiations ought to be generally admissible in Singapore. Given that the plaintiff did not refer to any pre-contractual negotiations in his pleadings and arguments, it was not necessary for me to say more on this topic.

38 I did find that it was odd for the plaintiff to rest his position on the first and second defendants being independent contractors rather than agents; in most, if not all, cases concerning the distinction, it is the plaintiff arguing assiduously for agency, while the putative principal would deny it strenuously. The fact that the roles were inverted on the present facts underscores how the plaintiff is attempting to construe the first and second defendants as independent contractors outside the terms of the settlement agreement so as to be able to pursue them for further recovery above and beyond the resolution reached in the settlement.

39 Whether a relationship of agency exists between two parties will be subject to the terms of any contract between the putative principal and putative agent. Where the contract between the two is clear, it is not for any third party to re-characterise that relationship between them in some other way, unless the

relationship is alleged to be a sham or disguise. Any attempt to do so in the context of the present case would, however be a clear non-starter; nothing was pleaded or alleged that would have characterised the defendants' invocation of agency as anything but *bona fides*. There is no allegation of there being a sham on the instant facts.

40 With the settlement agreement as it was, it was simply not open to the plaintiff to argue that the first and second defendants were independent contractors and therefore not "agents" within the meaning of the settlement agreement. Similarly, it is not open to the defendants to change their position on whether or not a relationship of agency existed *ex post facto*.

41 Given that this was a question of interpretation of the contractual provisions, it followed then that, contrary to the plaintiff's position, no factual determination was required as to whether the first and second defendants were independent contractors, and nothing stood in the way of a determination under O 14 r 12. For the reasons outlined above, I determined that the first and second defendants were the third defendant's agents within the meaning of the settlement agreement.

Striking out under O 18 r 19 of the ROC

The law on striking out

42 O 18 r 19(1) of the ROC provides that the Court can order pleadings to be struck out where they:

(a) Disclose no reasonable cause of action or defence (O 18 r 19(1)(*a*));

(b) Are scandalous, frivolous or vexatious (O 18 r 19(1)(*b*));

(c) May prejudice, embarrass or delay the fair trial of the action (O 18 r 19(1)(*c*)); or

(d) Are otherwise an abuse of process of the Court (O 18 r 19(1)(*d*)).

43 The principles governing the application of O 18 r 19(1) of the ROC are reasonably well-established. It will typically only be in "plain and obvious" cases that the power of striking out should be invoked: *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 at [18]. This is anchored on the judicial policy to afford a litigant the right to institute a *bona fide* claim before the courts and to prosecute it in the usual way unless the case is wholly and clearly unarguable: *Tan Eng Khiam v Ultra Realty Pte Ltd* [1991] 1 SLR(R) 844 at [31].

44 The authors of *Singapore Civil Procedure 2020* observe at [18/19/6] that "[t]he claim must be obviously unsustainable, the pleadings unarguably bad and it must be impossible, not just improbable, for the claim to succeed before the court will strike it out". It also bears note that each limb of O 18 r 19(1) of the ROC provides a separate and distinct basis for the Court's exercise of its power to strike out pleadings: *The "Bunga Melati 5"* [2012] 4 SLR 546 at [31].

The settlement agreement

45 What followed from the conclusion that the first and second defendants were agents of the third defendant was that they were within the ambit of the settlement agreement, and that the plaintiff had contracted to absolve them of liability. Thus, the proceedings instituted by the plaintiff should be struck out for want of a reasonable cause of action, and for abuse of process.

46 As noted above, the ambit of the settlement agreement covers claims by the plaintiff against the third defendant and its agents. Specifically, it is clear that the settlement agreement covers any claims for injuries and damages arising out of the accident.

47 As I have already found that first and second defendants were indeed covered by the settlement agreement by virtue of being the third defendant's agents, the suit against them would be an abuse of process. The agreement was binding and intended to put to rest the very kind of proceedings which the plaintiff was pursuing in this suit. It is clear from the case of *Chua Choon Lim Robert v MN Swami and others* [2000] 2 SLR(R) 589 at [42], [45], and [50] that an action brought in breach of an undertaking to not commence litigation is liable to be struck out under O 18 r 19 of the ROC as being vexatious and an abuse of the process of Court. The very essence of entering into a full and final settlement in the context of personal injury is twofold: to secure a measure of recompense for the injury suffered, and to allow for finality for the potentially liable party. For the plaintiff to then turn around and persist in seeking to claim damages for injury he has already been compensated for would be to undermine the very basis of the settlement. The Court's processes cannot be used to assist such undermining.

48 Abuse of process would thus be made out as a basis for striking out the plaintiff's action under O 18 r 19(1)(*d*) of the ROC, or pursuant to the inherent jurisdiction of the Court. These same circumstances would, to my mind, also be sufficient to constitute both the absence of a reasonable cause of action under O 18 r 19(1)(*a*) of the ROC, as well as being vexatious under O 18 r 19(1)(*b*) of the ROC.

Extended doctrine of res judicata

49 The defendants argued that even if the first and second defendants were not found to be agents of the third defendant, the extended doctrine of *res judicata* barred the present claim.[33] Specifically, the extended doctrine of *res judicata* operated to bar the reopening of a settlement or a consent order: *Venkatraman Kalyanaraman v Nithya Kalyani and others* [2016] 4 SLR 1365 ("*Venkatraman*") from [29] to [31].[34] The extended doctrine of *res judicata* rendered the plaintiff's claim against the first and second defendants an abuse of process, frivolous and vexatious, and/or such that it disclosed no reasonable cause of action. Specifically, as regards the second defendant, no reasonable cause of action arose as the second defendant had ceased its involvement with the vessel prior to the plaintiff's accident. The second defendant had handed over management of the vessel to the first defendant on 15 June 2015, significantly pre-dating the plaintiff's injury.[35]

50 Further, in invoking the extended doctrine of *res judicata*, the defendants claimed that the plaintiff knew from the correspondence entered into between the parties of the existence of the first and second defendants from an early stage.[36] Specifically, the defendants pointed to correspondence which pre-dates even the plaintiff's claim in the 2016 suit.[37] Prior to the 2016 suit, the plaintiff had attempted to make a workman injury compensation claim with the Ministry of Manpower ("MOM"). This MOM claim was withdrawn by the

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33 DWS at [62(b)].

34 DWS at [60].

35 2nd Affidavit of Ravi Muthusamy dated 12 March 2019 from pp 38 to 40.

36 DWS at [68] to [84].

37 DWS at [68] to [84]; HC/ADM 257/2016 was commenced on 12 November 2016.

plaintiff after compensation was assessed and before any payment, but what is significant for present purposes is that much of the defendants' correspondence arising out of this claim was signed by the first defendant's Captain John Anthony. Crucially, Captain John Anthony's emails were signed off as being "For and on behalf of the registered owners / As Managers and Agents only".[38]

51 Even after the withdrawal of the MOM claim, the plaintiff's letter of demand to the first defendant was replied to, once again, by Captain John Anthony, "[f]or and on behalf of the registered owners / As Managers and Agents only".[39] This indicates that, the ubiquitous and widely-used nature of the SHIPMAN 2009 standard form aside, the plaintiff must have been aware even prior to the commencement of his claim in the 2016 suit that the first (and second) defendants were acting as agents for the ship owners at the time.[40] The plaintiff was therefore well aware of the involvement of the first and second defendants, and had no excuse for not bringing any claims against them along with his action in the 2016 suit.[41]

52 In addition, the defendants also argued that even if the plaintiff could litigate incrementally by bringing claims against the first and second defendants after its claim against the third defendant had been settled, there was nonetheless abuse of process in not giving notice to the third defendant of any such intention.[42] In support of this proposition, the defendants cited *Jeffrey Charles*

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38 DWS at [68] to [84]; 4th Affidavit of Ravi Muthusamy filed on 12 April 2019 at pp 53 to 61.

39 4th Affidavit of Ravi Muthusamy filed on 12 April 2019 at pp 63 to 69.

40 DWS at [68] to [84].

41 DWS at [68] to [84].

42 DWS at [85] to [93].

Stuart v Stephen Goldberg and Carl Linde and another [2008] EWCA Civ 2 at [61], that:[43]

> … it must be potentially relevant that a Claimant knows about another claim, is contemplating asserting it against the same Defendant, but says nothing about it. That is borne out further by a passage in Lord Millett's speech in the same case, [2002] 2 AC at 61:
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> > "Given that Mr Johnson was entitled to defer the bringing of his own proceedings at the time until after the company's claims had been resolved, it would have been unconscionable for him to have stood by without disclosing his intentions and knowingly allowed the firm to settle the company's action in the belief that it was dealing finally with all liability arising from its alleged negligence in the exercise of the option. To bring his own claim in those circumstances would, in my opinion, amount to an abuse of the process of the court."
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> …

This view was also adopted in *Antariksa Logistics Pte Ltd and others v Nurdian Cuaca and others* [2018] 3 SLR 117 ("*Antariksa Logistics*") from [95] to [99].

53 The extended doctrine of *res judicata* has its origins in the seminal decision of Sir James Wigram VC in *Henderson v Henderson* [1843] 3 Hare 100 at 114. In *Lim Geok Lin Andy v Yap Jin Meng Bryan and another appeal* [2017] 2 SLR 760, the Court of Appeal observed at [39] that:

> 39 The prominence of the rule in *Henderson* was recently re-affirmed in the United Kingdom Supreme Court case of *Virgin Atlantic Airways Limited v Zodiac Seats UK Limited (formerly known as Contour Aerospace Limited)* [2013] UKSC 46. Lord Sumption observed (at [25]) that:
>
> > Res judicata and abuse of process are juridically very different. Res judicata is a rule of substantive law, while abuse of process is a concept which informs the exercise of the court's procedural powers. In my view, they are

[43] DWS at [109]; Defendants' Bundle of Authorities vol 2 dated 3 January 2020 at Tab 20.

> distinct although overlapping legal principles with the common underlying purpose of limiting abusive and duplicative litigation.

54 The Court of Appeal further noted at [44] that:

> It seems to us that the common thread linking the decisions relating to the doctrine of abuse of process is the courts' concern with managing and preventing multiplicity of litigation so as to ensure that justice is achieved for all. … It is important to also emphasise not only the *fact-sensitive* nature of the inquiry that is entailed in apply the rule in *Henderson* but also the *strict limits* within which such a rule will be applied … the court will exercise its discretion in such a way as to strike a balance between allowing a litigant with a genuine claim to have his day in court on the one hand and ensuring that the litigation process would not be unduly oppressive to the defendant on the other …
>
> [Emphasis in original]

55 The policy reasons underlying the doctrine were summarised in *Antariksa Logistics* at [82] as seeking to bring finality to litigation and avoid multiplicity of proceedings. This promotes the public interest of efficiency and economy in the conduct of litigation, and also prevents litigants from being oppressed and unfairly harassed by legal proceedings.

56 In deciding whether the doctrine applies, the Court may also assess other considerations such as (i) whether there are *bona fide* reasons why an issue that ought to have been raised in the earlier action was not raised, (ii) how closely connected the causes of action are in terms of the required supporting facts, and (iii) whether, holistically speaking, the later proceedings are in substance nothing more than a collateral attack on the previous decision: *Antariksa Logistics* from [110] to [112]. Parties will generally not be allowed to reopen litigation if the matters should have been raised originally. As rightly argued by the defendants, the doctrine now extends to matters which have been settled

either by consent judgment or by a settlement agreement: *Venkatraman* as discussed at [49] above.

57 In the context of the extended doctrine of *res judicata*, there is no need for strict identity of parties for the doctrine to apply, at least in respect of litigation: *Lai Swee Lin Linda v Attorney-General* [2006] 2 SLR(R) 565 at [62] to [64]; *Then Khek Koon and another v Arjun Permanand Samtani and another and other suits* [2014] 1 SLR 245 ("*Then Khek Koon*"). In *Then Khek Koon*, it was noted at [100] that:

> The extended doctrine of *res judicata* does not require that the parties to both suits be the same. That must be so: the whole point of the extended doctrine of *res judicata* is to avoid an unnecessary and undesirable proliferation of proceedings relating to the same subject matter: see the speech of Wigram VC in *Henderson v Henderson* (1843) 3 Hare 100. To hold otherwise would allow a plaintiff with a cause of action against a number of severally-liable defendants to bring successive separate actions against each defendant until he got the desired result. To permit that would lead to a multiplicity of proceedings, the possibility of inconsistent findings of fact and would fail to achieve finality in litigation.

That risk of a multiplicity of proceedings arising applies even where a settlement is reached. To restrict the operation of the extended doctrine of *res judicata* to situations where parties in both suits were perfectly identical would undermine the one of the key objectives of settlement – achieving finality by putting litigation to rest.

58 What matters ultimately is, as observed by George Wei J at [77] of *Antariksa Logistics*, whether "in all the circumstances, a party is abusing the process of the court by seeking to raise before it an issue which could have been raised before". On the instant facts, I am satisfied that the extended doctrine of *res judicata* should apply.

59 First, the plaintiff is relying on fundamentally the same set of facts in the present action against the first and second defendants as it did in its action against the third defendant in the 2016 suit. The similarities in the statements of claim for both actions are particularly telling. The statement of claim in the present action outlines materially similar particulars of how the accident came about (from [8(a)] to [8(j)]) as the statement of claim in the 2016 suit (from [6(a)] to [6(ee)]). Even the details of the negligent breach on the part of the first and second defendants asserted in the statement of claim for the present action are entirely subsumed by the allegations of breach in the 2016 suit. For example, the plaintiff asserts in the present action that the first and second defendants "failed to ensure that the modified Turning Gear Remote Control was safe",[44] "failed to ensure that the modified Turning Gear Remote Control was of good construction, sound material and free from defects and was used and maintained in a manner that it was safe to use",[45] and "failed to renew or repair the defective Turning Gear Remote Control".[46] The statement of claim in the 2016 suit covers the exact same ground, with assertions that the third defendant had "[f]ailed to replace the defective Turning Gear Remote Control which had been illegally modified",[47] "[f]ailed to replace and/or repair the Turning Gear Remote Control … even though the [p]laintiff … had alerted the Senior Management on the illegal and unsafe modification",[48] and "[f]ailed to ensure that the illegally modified Turning Gear Remote Controller [*sic*] was monitored at all times

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44 Statement of Claim at [9(a)].

45 Statement of Claim at [9(b)].

46 Statement of Claim at [9(e)].

47 Statement of Claim in HC/ADM 257/2016 ("ADM SOC") at [8(uu)].

48 ADM SOC at [8(vv)].

during the Scavenge Space Cleaning and Inspection exercise".[49] Fundamentally, the plaintiff is covering the same ground already traversed in the 2016 suit.

60 Second, not only is the plaintiff reiterating already-covered ground, he is seeking the same remedy in monetary damages for the same loss which he had sought to vindicate in the 2016 suit – namely for his injuries and the loss of amenity caused by the accident. The evidence and medical reports relied on by the plaintiff in this regard are telling in that the exact same documents and medical reports are relied on to establish his loss in the present action as were relied on in the 2016 suit.[50] That loss has already been provided for by the settlement. To permit further recovery for the same loss runs a very high risk of double-recovery. Viewing the facts holistically, they strongly suggest that the current action is, in effect, little more than a collateral attack on the resolution provided for in the settlement agreement.

61 Third, as noted by the defendants, the plaintiff was aware of the existence of the first and second defendants when the 2016 suit was brought, and the facts relied on were the same or substantially similar ([49] to [51] above). Even the causes of action relied on were the same. No other evidence or special circumstances arising after the settlement agreement were invoked. Given all this, there did not appear to be a *bona fide* reason for the plaintiff not bringing any claims he had against the first and second defendants at the same time he commenced the 2016 suit against the third defendant. Further, in light of all the circumstances, including the significant involvement of personnel from the first defendant in dealing with the 2016 suit (see above at [50] and

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49 ADM SOC at [8(yy)].

50 Statement of Claim at [13]; see also ADM SOC at [16].

[51]), there would have been an expectation that the settlement agreement which compromised the 2016 suit covered the first and second defendants as well.

62 In sum, I am satisfied that even if the first and second defendants were not agents of the third defendant within the scope of the settlement agreement, the extended doctrine of *res judicata* operated on the instant facts to render the plaintiff's current suit an abuse of process. The abuse in this context causes prejudice because the parties and those expected to have benefited or been protected by the resolution of the 2016 suit would have arranged not just their affairs but also their expectations on the basis of the agreement and the bargain that was reached. Allowing one party to go outside the settlement would be to cause prejudice, as would allowing the plaintiff to bring fundamentally the same case against the first and second defendants when it had chosen not to do so earlier.

63 I noted for completeness that the plaintiff had argued that as the payments under the settlement agreement had been made *ex gratia* and with no admission as to liability, the extended doctrine of *res judicata* would not apply. No authority was cited for this proposition. I could not agree with such a claim. What mattered was not the nature of the payment, or whether liability for such payment was in fact admitted, but rather the fact that the settlement was intended to conclude matters and preclude further proceedings. It was an abuse of process for the plaintiff to have pursued these proceedings after that agreement was reached.

64 The ability of parties to organise and pursue their actions as they see fit is not an untrammelled or unbounded right: there will have to be limits to ensure proper case management and efficiency, as well as to avoid prejudice. As observed by Sundaresh Menon JC (as he then was) in *Goh Nellie v Goh Lian*

Teck and others [2007] 1 SLR(R) 453 at [23], citing *Bradford & Bingley Building Society v Seddon* [1999] 1 WLR 1482:

> … the task of the court [is] to draw the balance between the competing claims of one party to put his case before the court and of the other not to be unjustly hounded given the earlier history of the matter …

65 I was satisfied that the plaintiff has had ample opportunity to put his full case involving any claims against the first and second defendants before the Court, but had failed to do so. Accordingly, even if the first and second defendants were found not to be agents within the ambit of the settlement agreement, the plaintiff's pleadings still ought to be struck out as an abuse of process, and his action dismissed. The first and second defendants should not be unjustly hounded further.

Miscellaneous Matters

66 I noted that in the entirety of the statement of claim for the present action, there was nothing which explained how the second defendant was involved and potentially liable for the plaintiff's injury. This was all the more so given that the second defendant had handed over management of the vessel to the first defendant as of 15 June 2015. As mentioned above, this handing-over clearly pre-dated the first defendant's injury.

67 The plaintiff's response to this, in its pleaded reply, was to assert that the "Turning Gear Remote Control was damaged during the time the 2nd Defendants were the managers of the Vessel".[51] No other particulars were provided beyond this bare assertion, which had not even been made in the plaintiff's statement of claim. While I was cognizant of the high threshold

[51] Reply at [9].

required before striking out was warranted, I was not persuaded that the plaintiff's bare assertion in this regard should suffice to render the claim against the second defendant an arguable one. It was not pleaded that the second defendant owed a duty of care to the plaintiff which survived the second defendant no longer being the ship manager, nor was any explanation provided as to why this particular allegation was not raised in the 2016 suit. The absence of any reasonable cause of action within the meaning of O 18 r 19(1)(*a*) of the ROC was thus another basis for the striking out of the plaintiff's action *vis-à-vis* the second defendant.

Conclusion

68 In sum, I was of the view that the question outlined at [5] above was one which was suitable for determination under O 14 r 12 of the ROC. I agreed with the AR's determination of the question that the first and second defendants were agents within the ambit of the settlement agreement.

69 Given that determination, I was satisfied that there was sufficient basis to strike out the plaintiff's pleadings on the basis that the settlement agreement discharged the liability of the first and second defendants. Even if I was mistaken as to the determination of the question, I was persuaded that the plaintiff's present claim was precluded by operation of the extended doctrine of *res judicata*. The plaintiff's appeals were therefore dismissed in their entirety.

70 Costs were subsequently ordered against the plaintiff.

Aedit Abdullah
Judge

Goh Kok Leong and Daniel Tan An Ye (Ang & Partners) for the plaintiff;
Sze Kian Chuan, Tan Shi Yun, Jolene, and Low Hui Chen Nicola (Joseph Tan Jude Benny LLP) for the defendants.
