

Yeoh Poh San and Another v Won Siok Wan
[2003] SGHC 101

Case Number : Suit 12/2002
Decision Date : 30 April 2003
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : L Kuppanchetti (Alban Tay Mahtani & De Silva) for the Plaintiffs; Andre Arul (Arul Chew & Partners) for the Defendants
Parties : Yeoh Poh San; Choo Lee Chin — Won Siok Wan

Civil Procedure – Pleadings – Amendment – Defendant introducing new grounds of defence one month before trial – Amendments within knowledge of defendant from the start – Whether amendments causing hardship or prejudice to Plaintiffs.

1 On 7 March 2003, the Defendant applied by way of Summons-in-Chambers No 1357 of 2003 for depositions to be taken in Malaysia under Order 39 of the Rules of Court from nine named persons and 'any other witness in Malaysia consented to by the parties to this action' and for such depositions to be received in evidence at the trial of this action. On 8 March 2003, she applied by way of Summons-in-Chambers No 1385 of 2003 for leave to amend her Defence filed on 10 June 2002. Both applications were heard by Assistant Registrar Teo Hsiao Huey on 12 March 2003 and were dismissed, with the Defendant being ordered to pay the Plaintiffs costs of \$1,500 and \$800 respectively.

2 The Defendant then filed Registrar's Appeals No 74 and 75 of 2003 to appeal against the dismissal of her applications. On 9 April 2003, I dismissed both appeals and ordered the Defendant to pay costs of \$4,000 in respect of both appeals. The Defendant now appeals to the Court of Appeal against the dismissal of only Registrar's Appeal No 75 of 2003 relating to the application for amendment of the Defence.

The Facts As Pleaded

3. All three parties in this action are Malaysians. In their Statement of Claim filed on 4 January 2002, the Plaintiffs stated that they were married on 8 August 2001 and that the Defendant was a live-in female companion of the First Plaintiff for some 20 years until 11 June 2001. In December 1999, the First Plaintiff instructed that a current account be opened with a bank in Singapore in the joint names of the Second Plaintiff and the Defendant with a view to depositing his money there. That was done. Subsequently, a fixed deposit account and a foreign currency account denominated in US dollars were also opened in the joint names of the Second Plaintiff and the Defendant.

4. The First Plaintiff orally instructed both of them that the money in the accounts was not to be withdrawn without his express authorisation or consent. His intention was for both of them to preserve the money in the accounts for his old age and, upon his death, for both of them to share whatever was left equally. All the money in the three joint accounts came from the First Plaintiff. They thus held all the money on implied, resulting or constructive trust for the First Plaintiff.

5. In October 2000, upon the instructions of the First Plaintiff and with the knowledge of the Defendant, the Second Plaintiff transferred \$800,000 from the current account to the fixed deposit account. Apart from this, there was no withdrawal from the joint accounts until 11 June 2001.

6. On that date, the Defendant left the First Plaintiff's home and withdrew or transferred to her personal account or some other unknown account substantial amounts from the joint accounts without the knowledge of the Plaintiffs and without the authorisation or consent of the First Plaintiff.

\$1,036,000 was withdrawn from the current account leaving a balance of only \$1,567.79. \$810,596.41 was withdrawn from the fixed deposit account and US \$372,122.49 was withdrawn from the foreign currency account, leaving both accounts with no money.

7. The Defendant refused to account to the First Plaintiff in respect of the withdrawn sums of money. Accordingly, the Plaintiffs claimed a declaration that the Defendant held the money and all income, proceeds and assets derived therefrom on trust for the First Plaintiff. They also claimed the return of the money withdrawn from the accounts and asked that an inquiry be held to determine the income, proceeds and assets derived directly or indirectly from it.

8. In her Defence, the Defendant averred that she met the First Plaintiff in 1975 when she was 20 years old. She worked as his personal assistant. He was and is a partner in a law firm in Kuala Lumpur but had not been in active practice for many years. He used to be a member of the Malaysian Parliament. After his political career ended, he was involved in property and construction business dealings.

9. Subsequently, the Defendant began cohabiting with the First Plaintiff and his then wife. After that marriage was dissolved, she continued cohabiting with him as husband and wife for about 22 years until her 'forced departure' from the home on 11 June 2001. She has commenced proceedings in Malaysia seeking a declaration that she was the wife of the First Plaintiff. As she was his wife, she was relying on the doctrine of presumption of advancement from husband to wife.

10. In late 1995, the First Plaintiff rekindled his friendship with a senior government official in Malaysia and was thus able to secure various government construction contracts for three large Malaysian companies for which he was paid fees or commissions in excess of RM 40 million, much of which was paid into his law firm's client's account. The Defendant pleaded that she had directly and/or indirectly contributed to the earning of the fees or commissions.

11. In July 2000, the Defendant asked her brother-in-law to manage the funds which the First Plaintiff had agreed to set aside for her or had given to her. Some of the funds ended up in the Singapore bank accounts in issue. The money in those accounts belonged to her solely. She and the Second Defendant had travelled here by air in December 2000 on a day trip for the purpose of opening the joint accounts. The current account was opened with a cheque for \$200,000 drawn by the Defendant's relative who accompanied them to the bank. That amount was subsequently repaid to the said relative. The forms for the other joint accounts were signed in Malaysia and sent by the Second Plaintiff to Singapore for processing.

12. The Defendant further averred that arrangements were made for the said fees or commissions received by the First Plaintiff to be deposited into the Singapore bank accounts by her or by the Second Plaintiff. The Second Plaintiff was involved in the said bank accounts because she was employed in the law firm as the personal manager/accountant and much of the fees or commissions was initially paid into the law firm's client's account. However, the money in the said bank accounts had always been intended for the Defendant alone. The purpose of the Second Plaintiff being a joint account holder was to enable the money to be withdrawn by her in the event of the demise of the Defendant without the need for probate action. The bank statements were sent by the bank to the home of the First Plaintiff and the Defendant. She would check the figures and then send them to the Second Plaintiff for filing.

13. The Defendant admitted leaving the First Plaintiff's house in the following circumstances. She was asked by him to kill one of her brothers with whom the First Plaintiff was having a serious dispute over money. She obviously refused to comply with his demand and was told by him she would have to leave their home for her refusal. Having seen his true colours, she left.

14. The Defendant averred that she was entitled to withdraw the money in the bank accounts in

issue as it belonged to her. She was therefore under no obligation to seek the approval of either Plaintiff before doing so.

The Defendant's Application to amend her Defence

15. The Defendant sought to include the following paragraphs as part of her Defence:

"12A. The Defendant avers that the commissions were obtained illegally by the 1st Plaintiff and/or the 2nd Plaintiff and thereafter channelled into the 1st Plaintiff's legal firm's client's account. The Defendant avers that the monies or part of the monies were thereafter transferred through the use of intermediaries into the Singapore Bank Accounts. The Defendant avers that by reason of the monies in the Singapore Bank Accounts having been monies obtained illegally by the 1st Plaintiff and/or the 2nd Plaintiff, the recovery of the monies in the Singapore Bank Accounts by the Plaintiffs is contrary to public policy and illegal.

12B. Further and/or in the alternative, the Defendant avers that the monies were transferred from Malaysia to the Singapore Bank Accounts in contravention of the relevant exchange control regulations in force in Malaysia at the material time. The Defendant avers that by reason of the same, the recovery of the monies in the Singapore Bank Accounts by the Plaintiffs is contrary to public policy and illegal.

12C. The Defendant further avers that further and/or in the alternative, by reason of the aforesaid illegal acts and by application of the equitable maxim that "He who comes to equity must come with clean hands", the Courts should not allow the Plaintiffs to recover the monies in the Singapore Bank Accounts."

16. In her Summons-in-Chambers, the Defendant stated:

"The grounds of this application is that the Defendant wishes to amend the Defence to further clarify the Defence and to make clear that the Defendant is relying on illegality and public policy grounds as her Defence so that the Plaintiffs will not be caught by surprise at the trial."

The Decision of the Court

17. For the appeal before me, the Defendant filed two more affidavits. The first contained essentially legal submissions while the second annexed an opinion prepared by Malaysian lawyers based on the facts as narrated by the Defendant. The opinion stated that the proposed amendments to the Defence would raise issues of contravention of the Malaysian Exchange Control Act 1953 and Income Tax Act 1957 and that the arrangement for the transmission of monies into the Singapore bank accounts might be unlawful and therefore void under the Malaysian Contracts Act 1950. It further stated the Courts in Malaysia would not allow a party to obtain relief premised on an illegality and the Plaintiff in this case would clearly be relying on the illegal arrangement. I allowed the affidavits to be admitted as they did not raise any new point and both parties were prepared to argue the appeal with or without the affidavits.

18. The Defendant submitted that under Order 20 rule 5 of the Rules of Court, the Court may allow any party to amend his pleading at any stage of the proceedings on such terms as to costs or otherwise as may be just. Various authorities were cited for the propositions that amendments should be allowed to enable the real question in controversy to be decided and should not be refused solely because they have been made necessary as a result of an honest mistake. This was so even if a new defence would be raised by the amendments.

19. It was argued that however blameworthy (short of bad faith) a party might have been and however late the application to amend might have been, the application should generally be allowed if

it would not prejudice the other party and there could be no injustice if the other party could be compensated by an appropriate order as to costs (*Ketteiman v Hansel Properties* [1987] AC 189).

20. The principles relating to amendment of pleadings summarized in that case were adopted by our Court of Appeal in *Wright Norman & Anor v OCBC Ltd* [1994] 1 SLR 513 where it was held that the judge was in error in refusing leave to amend a defence of fair comment in a libel case to include a plea of justification on the ground that delay was a decisive factor. It was said there that delay unaccompanied by any resulting hardship or prejudice could not be a sufficient ground in itself for refusing leave to amend although it was a relevant consideration.

21. It must be noted that the application for amendment in *Wright Norman* was made in February 1992 for a trial eventually fixed to commence in September 1992, a gap of some seven months. In the present case, the trial was ordered several months ago to commence on 21 April 2003 and was scheduled for 10 days. It was only in March 2003 that this application was taken out. The Defence had been filed for almost nine months before the Defendant took out the application to amend it. If the facts alleged in the proposed amendment were true, they were surely well within the knowledge of the Defendant who had been so close to the First Plaintiff for years. She had previously applied unsuccessfully for the case to be tried in Malaysia, one of the grounds being that material witnesses who were nationals and residents of Malaysia would have to be called. That application was heard by an Assistant Registrar in April 2002 and the appeal therefrom was dismissed in May 2002. Further, the Defendant's counsel submitted before me that the Defendant on her own would be able to substantiate the allegations of illegality. That could only mean she was aware of the facts to be adduced in support of the allegations.

22. The amendments, if allowed, would go far beyond mere clarification of her Defence which was, in essence, an averment that the money in the bank accounts had been given by the First Plaintiff to her. In the circumstances, to allow the amendment now would be to adjourn the trial of an action commenced in January 2002 to the prejudice of the Plaintiffs. In any event, the alleged acts of illegality, which the Plaintiffs denied and even if proved, did not have to be relied upon by the Plaintiffs in support of their claim against the Defendant (*PP v Intra Group (Holdings) Co Inc* [1999] 1 SLR 803). I therefore agreed with the Assistant Registrar that leave to amend the Defence should be refused.

23. The Defendant said it was ironic that the Plaintiffs were applying to amend their Statement of Claim so close to the trial (Summons-in-Chambers No 1695 of 2003 filed on 21 March 2003 and fixed for hearing on 16 April 2003) but were objecting to her amending her pleading. However, the amendments sought by the Plaintiffs related only to the 'claim clause' at the end of the Statement of Claim in that both Plaintiffs, instead of the First Plaintiff only, would be seeking the return of the money in question and the declaration of trust sought would be an additional instead of an alternative prayer. They certainly would not alter or enlarge the claim and would require no consequential amendment on the part of the Defendant.

24. As a result, the Defendant's application for depositions to be taken in Malaysia in support of the proposed amended Defence became quite unnecessary. I would not have granted the application in any event considering its lateness and the fact that the Defendant, through her counsel, had professed her ability to substantiate the allegations of illegality on her own.

25. For all the above reasons, I dismissed the Defendant's appeals against the decisions of the Assistant Registrar and ordered the Defendant to pay costs of \$4,000 to the Plaintiffs in respect of both appeals..

Defendant's appeals dismissed with costs.

