

Sumikin Bussan Corp v Hiew Teck Seng (alias Yaw Teck Seng) and Another
[2005] SGHC 76

Case Number : Suit 407/2004, RA 313/2004, 314/2004
Decision Date : 20 April 2005
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : Harish Kumar (Engelin Teh Practice LLC) for the plaintiff; Jonathan Seng (Rodyk and Davidson) for the first defendant; Roland Tong (Kurup and Boo) for the second defendant

Parties : Sumikin Bussan Corp — Hiew Teck Seng (alias Yaw Teck Seng); Taikichi Ito

Civil Procedure – Summary judgment – Plaintiff obtaining extension of time to file reply to defence – Whether extension of time to file reply postponing time of deemed closure of pleadings – Whether plaintiff's right to file summary judgment application revived by such extension of time – Order 14 r 14, O 18 r 20 Rules of Court (Cap 322, R 5, 2004 Rev Ed)

20 April 2005

Judgment reserved.

Judith Prakash J:

Introduction

1 These registrar's appeals first came on for hearing before me on 23 March 2005. I allowed the appeals brought by the plaintiff and set aside the order made below. Thereafter, the defendants wrote in for further arguments and, having heard these further arguments on 13 April 2005, I reserved my decision.

2 These appeals involve the proper interpretation of O 14 r 14 of the Rules of Court (Cap 322, R 5, 2004 Rev Ed) ("the Rules") in the light of O 18 r 20. At the time the issue arose, those rules, respectively, provided:

Time limit for summary judgment applications (O. 14, r. 14)

14. No summons under this Order shall be filed more than 14 days after the pleadings in the action are deemed to be closed.

Close of pleadings (O. 18, r. 20)

20.—(1) The pleadings in an action are deemed to be closed —

(a) at the expiration of 14 days after service of the reply or, if there is no reply but only a defence to counterclaim, after service of the defence to counterclaim; or

(b) if neither a reply nor a defence to counterclaim is served, at the expiration of 14 days after service of the defence.

(2) The pleadings in an action are deemed to be closed at the time provided by paragraph (1) notwithstanding that any request or order for particulars has been made but has not been complied with at that time.

Since the issue arose, O 14 r 14 has been amended in that the period of 14 days has been changed to 28 days.

3 The plaintiff, Sumikin Bussan Corporation, commenced this action on 14 May 2004. By the Statement of Claim endorsed on the Writ, the plaintiff claimed from the first defendant, Hiew Teck Seng (alias Yaw Teck Seng), and the second defendant, Taikichi Ito, moneys allegedly due under a guarantee that they had executed in favour of the plaintiff. The Writ was duly served and both defendants entered appearance. The second defendant filed his Defence on 7 June 2004 and the first defendant filed his Defence one week later on 15 June 2004. The plaintiff did not file a Reply at that stage to either Defence and this meant (by reason of the application of O 18 r 20(1)(b)) that as against the second defendant, pleadings were deemed to be closed on 21 June 2004 and, as against the first defendant, pleadings were deemed to be closed on 29 June 2004. Accordingly, the plaintiff had up to 5 July 2004 to make a summary judgment application against the second defendant and up to 13 July 2004 to make a similar application in respect of the first defendant. No such application was filed by the respective dates.

4 On 21 July 2004, the plaintiff requested the first defendant's consent to the filing of the Reply out of time. The first defendant gave his consent and the Reply was eventually filed on 17 August 2004. A similar request made to the second defendant was rejected so the plaintiff made a formal application for an extension of time to file a Reply. That application was granted on 30 August 2004. On 6 September 2004, the plaintiff filed its Reply to the second defendant's Defence and, the next day, filed an application for summary judgment against both defendants.

5 A few days later, the second defendant filed an application asking for the plaintiff's summary judgment application to be struck out on the ground that it had been filed out of time. The second defendant's application was heard on 8 October 2004 and Senior Assistant Registrar Toh Han Li, holding for the second defendant, struck out the summary judgment application as against the second defendant. On 11 October 2004, the plaintiff's application for summary judgment came up for hearing as against the first defendant. Assistant Registrar Lee Kee Yeng dismissed the application on the basis that it had been filed out of time. The plaintiff appealed against both decisions and those are the appeals that I heard.

Submissions and analysis

6 The plaintiff's position was straightforward. It argued that O 14 r 14 provided for an application for summary judgment to be filed within 14 days of the deemed closure of pleadings and that it had complied with this requirement because its O 14 application had been filed within 14 days of the filing of its Reply to the Defence of the second defendant. The time when pleadings were deemed to be closed was fixed by O 18 r 20 and two alternative dates were given: (a) the date falling 14 days after service of the Defence, or (b) the date falling 14 days after service of the Reply. The plaintiff argued that because the time for filing the Reply had been extended (in one case by consent and in the other by an order of court), the pleadings could not be deemed to be closed until after the second Reply was filed. On this view of the matter, there was no breach of the time requirements imposed by the Rules for the filing of an O 14 application.

7 The submissions of both defendants ran roughly along similar lines. They relied heavily on the decision in *United Engineers (Singapore) Pte Ltd v Lee Lip Hiong* [2004] 4 SLR 305 ("the *United Engineers* case") in support of their argument that where there is an extension of time for pleadings, there is no automatic corresponding extension of time for O 14 applications. That case had decided that the time limit imposed by O 14 r 14 was an absolute one and could not be extended by the court or by the parties themselves consenting to an extension. The court had explained that the rationale

for the absolute nature of the time limit was to give certainty to the proceedings so that it was clear to the parties that no summary judgment application would be made beyond the time provided by the Rules. The deeming provision under O 18 r 20 should be applied strictly in order to provide certainty as to the time pleadings are deemed to be closed. The reason for this approach was that many other events depended on the date on which pleadings were deemed to be closed, and if this deemed date was subject to the shifting of time lines, the parties would not know with certainty as to when their further obligations (such as the filing of summons for directions) took effect.

8 The defendants submitted that it would work against the intention of the Rules to provide for certainty on the time within which a summary judgment application was to be made to allow the plaintiff in this case to make its summary judgment application without leave two months after pleadings were first deemed to be closed. It would be unfair to the first defendant, who believed that the time for making such an application had expired when it consented to an extension of time for filing of the Reply, to allow the plaintiff to make the application after filing the Reply. Further, allowing the appeal would result in an anomalous situation in that a plaintiff would not be allowed to make a summary judgment application out of time in the case where he had amended his statement of claim (on the authority of the *United Engineers* case) but where the same plaintiff could make the application out of time by obtaining an extension of time to file a reply.

9 They submitted that it was clear that a plaintiff who wished to file a summary judgment application must get his pleadings and acts in order. There was no bar to the plaintiff filing a summary judgment application within the requisite time frame and then filing a reply later (with the necessary application for an extension of time). In this case, the plaintiff had not explained why it did not file the summary judgment application in time. The defendants took the view that such an explanation was necessary as otherwise there was no basis for the court to exercise its discretion in favour of the plaintiff. At the time the plaintiff filed the application for an extension of time to file a reply, it did not indicate that it intended to file the summary judgment application. The second defendant submitted that this was an abuse of process. The plaintiff could easily have raised the various arguments which it wanted to raise in its reply in the affidavit in support of its application for summary judgment.

10 The plaintiff, in reply, submitted that the *United Engineers* case was distinguishable. There the issue was whether, when the pleadings were amended, this would postpone the deemed closure of pleadings and thereby automatically extend the time limit under O 14 r 14. Here the issue was whether the fact that the court had expressly extended time to file the Reply postponed the deemed closure of pleadings. In this regard, *Singapore Civil Procedure 2003* (Sweet & Maxwell Asia, 2003) stated in para 18/20/2:

Whenever the time for service of a reply or defence to counterclaim or both has been extended whether by order of the court or by written consent of the parties (O.3 r.4(3)), the pleadings are not deemed to be closed until the expiry of such further time.

The plaintiff had obtained, on a contested application, an order extending the time for filing of its Reply to the Defence of the second defendant up to seven days from 30 August 2004. The plaintiff had duly filed a Reply on 6 September 2004. As such pleadings would be deemed to be closed on 20 September 2004 and since the summary judgment application was filed on 7 September 2004, the plaintiff had not transgressed O 14 r 14.

11 In coming to my decision, I looked closely at the *United Engineers* case. In that case, both the plaintiff and the third defendant had applied for an extension of time to file their summary judgment applications in respect of the claim and counterclaim respectively. Subsequently, the third

defendant was granted leave to amend its Counterclaim and a consequential order was made that the plaintiff be allowed to file an Amended Reply and Defence to Counterclaim. Thereafter, these parties, taking the view that the amendments to the pleadings had reopened the pleadings and thus revived their rights to file O 14 applications, both applied for summary judgment. The first defendant applied to set aside these applications on the ground that they were in contravention of O 14 r 14 and an abuse of the process of court. The first defendant was successful before the assistant registrar and the plaintiff then appealed. Its appeal was dismissed by Tay Yong Kwang J.

12 Tay J held that:

(a) To achieve some measure of certainty for the defendant and for the Registrar who was charged with management of cases, there had to be an absolute point beyond which no application for summary judgment could be taken out. A purposive interpretation of O 14 r 14 made it necessary to conclude that the time bar was an absolute one and could not be extended by the court. It followed that the parties were also not permitted to extend the time in O 14 r 14 by consent under O 3 r 4(3).

(b) The court would not invoke its inherent powers under O 92 r 4 to override the clear prohibition in O 14 r 14. No court should arrogate under itself a power to act contrary to the Rules.

(c) Order 18 r 20(1) fixed the deemed closure of pleadings with certainty. Amendments to pleadings did not postpone the deemed closure of pleadings and did not extend the time limit in O 14 r 14.

13 From the above, it can be seen that Justice Tay had to interpret the Rules in order to decide on matters that were not clearly covered by the Rules. The Rules do not state whether a party can or cannot apply for an extension of time to file an O 14 application and the Rules do not say anything about the effect that the amendment of a pleading has on the time at which the pleadings are deemed to be closed. These issues have to be resolved by an interpretation of the Rules and in the situation of a lacuna such issues of interpretation are often resolved by taking a purposive approach. As Tay J pointed out in deciding these issues, O 14 r 14 was introduced in December 2002 to deal with various problems that had been experienced in relation to O 14 applications. One of these was that under the previous regime, O 14 applications had sometimes been taken out at a very late stage in the proceedings and even just before the trial was about to commence. A late application for summary judgment introduces delays and increases costs. It was therefore considered to be desirable to fix a point in the proceedings beyond which no O 14 application could be made. That being the purpose of the introduction of O 14 r 14, Tay J went on to hold that neither the court nor the parties had the power to move that point by extending the time for filing an O 14 application.

14 As I see it, the issue here is a very different one because I do not have to decide what the framers of the Rules intended. The situation that is before me is one that is clearly covered by the Rules. Order 14 r 14 sets the time limit for the filing of O 14 proceedings by reference to the date when "pleadings in the action are deemed to be closed". The Rules themselves specifically state the date when "pleadings in an action are deemed to be closed" and this is in O 18 r 20 which provides that this happens 14 days after service of the reply or, when there is no reply, after service of the defence to counterclaim or, if there is no such defence to counterclaim, then after service of the defence. It is clear from this Rule that pleadings are only deemed closed after the service of the defence if there is no defence to counterclaim or reply filed thereafter. Therefore, if such a pleading is filed after the defence, then the pleadings are only deemed to be closed 14 days after service of the defence to counterclaim or the reply as the case may be.

15 The framers of the Rules were also aware that O 3 r 4 allows the court to extend or abridge the period within which a person is required by the Rules to do any act in proceedings and therefore that the court has power to grant an extension of time for filing all types of pleadings including a reply. This power to grant an extension of time to file pleadings has been part of the court's complement of powers for a long time and the effect that such an extension of time can have on an action is well known. The comment by the editors of the *Singapore Civil Procedure 2003* at para 28/20/2, that whenever the time for service of a reply or defence to counterclaim has been extended by the court or by parties, the pleadings are not deemed to be closed until the expiry of such further time, though not buttressed by the citation of case authority, is a statement that reflects a well-established and long-held view of the law. It is a statement that has been found in similar form in successive editions of the English *Supreme Court Practice* (Sweet & Maxwell) in relation to O 18 r 20 of the English Rules of the Supreme Court.

16 The framers of O 14 r 14 chose the deemed closure of pleadings as the reference point of time for the filing of O 14 proceedings because, as stated in the Rules of Court Working Party Report No 3 of 2002 dated 7 August 2002, once the issues are set out in the pleadings, the plaintiff should be able to decide whether to apply for summary judgment or to go for a full trial. They recognised that it was necessary for all pleadings to be in before any decision could be taken as to the viability of a summary judgment application. When the deemed closure of pleadings was taken as the reference point, then the fact that such deemed closure might, due to an extension of time to file a pleading, fall at a later point than the defendants in an action might otherwise expect, was a fact that parties would have to deal with. Parties and courts have dealt with a moving deemed closure of pleadings for generations with little mishap. I do not think that such a situation necessarily, even in the new regime, works unfairly against defendants. Defendants who think that pleadings are deemed to have been closed because no reply has yet been filed and who are then faced with either a request to consent to an extension of time or with an application for an extension of time have the ability to refuse to give such consent unless the plaintiff agrees not to file an application for summary judgment after filing his reply. Alternatively, if the matter goes to court, such defendants may ask the court to make it a condition of the grant of the extension that no application for O 14 be made. The protection given to the defendant is, therefore, that no plaintiff can unilaterally extend the time prescribed for the filing of any pleading.

17 My reading of the Rules is that they allow a plaintiff who has filed a reply to make an application for summary judgment within 14 (now 28) days of filing that reply whether that reply was filed within the original time frame contemplated or out of time consequent upon the grant of an extension of time or the defendant's consent thereto. The defendant can safeguard his position by refusing to consent to a late filing of the reply and then, if the plaintiff makes a court application for an extension, objecting to it being granted except on terms. It would then be up to the plaintiff to persuade the court that after filing the reply and despite his failure to observe the stipulated time frame for filing of pleadings he should not be prevented from making an application for summary judgment. The court would then be able to weigh all relevant circumstances and determine whether it would be right to deprive the plaintiff of access to the advantages of an expedition of proceedings and costs-saving afforded by the O 14 procedure.

18 In the result, I affirm the decision that I made on 23 March 2005.