# Sandar Aung v Parkway Hospitals Singapore Pte Ltd (trading as Mount Elizabeth Hospital) and Another
# [2007] SGCA 20

**Case Number** : CA 102/2006

**Decision Date** : 30 March 2007

**Tribunal/Court** : Court of Appeal

**Coram** : Andrew Ang J; Chan Sek Keong CJ; Andrew Phang Boon Leong JA

**Counsel Name(s)** : Ponniah James Leslie and Leong Sue Lynn (Wong & Lim) for the appellant; Lek Siang Pheng and Mar Seow Hwei (Rodyk & Davidson) for the respondents

**Parties** : Sandar Aung — Parkway Hospitals Singapore Pte Ltd (trading as Mount Elizabeth Hospital); Mount Elizabeth Medical Holdings Ltd (formerly known as Mount Elizabeth Hospital Ltd)

*Contract – Contractual terms – Rules of construction – Contract with hospital to pay all expenses incurred by stay in hospital and estimate of bill furnished by hospital signed – Final bill exceeding estimate greatly – Whether contract including estimate of bill such that no liability for payment of excess costs existing – Whether context and factual background of agreement relevant*

30 March 2007 Judgment reserved.

Andrew Phang Boon Leong JA (delivering the judgment of the court):

1 This is an appeal by Sandar Aung ("the appellant") against the decision of the trial judge ("the Judge") allowing, *inter alia*, Parkway Hospitals Singapore Pte Ltd ("the first respondent") to add Mount Elizabeth Medical Holdings Ltd ("the second respondent") as a co-plaintiff and giving judgment to the respondents for the sum of $320,083.77 on the basis of an agreement signed by the appellant (see *Parkway Hospitals Singapore Pte Ltd (trading as Mount Elizabeth Hospital) v Sandar Aung* [2007] 1 SLR 227 ("GD")).

2 After considering the parties' arguments on appeal, we have decided to allow the appeal, and set out our reasons for doing so.

**The facts**

3 This appeal arises out of a most unfortunate and unanticipated chain of events. On 7 January 2004, the appellant admitted her mother, Daw Tin Nyunt ("the patient") to Mount Elizabeth Hospital ("the hospital") for the purpose of undergoing an angioplasty. At the time of the patient's admission, the appellant had signed two documents – an "Estimate of Hospital Charges" ("the Estimate") and a standard form document entitled "Mount Elizabeth Hospital Ltd Conditions of Services/Hospital Policies" ("the contract").

4 The first respondent's witness, Ms Siew Mun Hong ("Ms Siew"), who served as a business office executive at the hospital during the relevant period, testified that she had handled the admission of the patient on 7 January 2004. While she could not specifically recall the patient or the appellant, Ms Siew's evidence was that she would have followed her usual routine of registering the patient and giving financial counselling. She further stated that the appellant was probably the only one present at the admission counter and who had undergone financial counselling, as only the appellant's signature appeared on both documents.

5 As the appellant elected not to call any evidence, Ms Siew's account of counselling, which entailed a two-step process, should be noted. First, a billing estimate would be given as part of the financial counselling process. According to Ms Siew, she would first obtain the doctor's admission letter and verify the patient's identity, before proceeding to register the patient for admission. She would then provide a financial estimate to the patient. This estimate was based on the diagnosis and medical procedure to be carried out, and would be generated by means of a computer programme. The estimate would then be printed out in a document entitled "Estimate of Hospital Charges" (*ie*, the Estimate), and its contents brought to the attention of the patient as well as the guarantor. She would then go through the estimated length of stay, accommodation charges and ancillary charges, and highlight that the estimates given excluded the doctors' charges. As part of her routine, she would also underscore that the figures shown were only estimates. Ms Siew would then inform the patient as well as the guarantor of the need for a deposit, and request that the patient as well as the guarantor sign the Estimate.

6 While Ms Siew was aware that complications could potentially arise and thereby inflate the cost of treatment beyond that stated in the Estimate, she testified that she had not informed the appellant or other patients about this possibility because it was not her task to do so. Neither did she inform or represent to the appellant that the final hospital bill would be limited to the amount stated in the Estimate.

7 The second stage of the process required Ms Siew to go through the contract, and ensure that the patient and the guarantor sign the contract. The guarantor would also have to sign an undertaking agreeing to be jointly and severally liable with the patient for "all charges, expenses and liabilities incurred by and on behalf of the patient" ("the undertaking"). The patient would then be given signed copies of the Estimate and the contract.

8 In the appellant's case, the Estimate for the patient's angioplasty stated that the accommodation charges for two days would be $878 and the ancillary charges would be $14,349.30. The "total estimated hospital charges" was thus computed to be $15,227.30.

9 However, an unanticipated series of events resulted in a medical bill that was far greater than that contained in the Estimate. The angioplasty procedure did not have the intended outcome and the patient was required to undergo an urgent open heart bypass surgery. The patient's health woes did not end there; her path to recovery was far from smooth and she suffered from a litany of ailments that included a minor stroke, infection, gangrene, bleeding into the intestinal tract, skin ulcers, deep vein thrombosis, eye problems as well as emotional changes. The patient thus had to be hospitalised for some eleven months until her eventual discharge from the hospital on 19 December 2004. The hospital subsequently rendered an invoice for $537,432.34, being the balance due for hospitalisation, medical facilities and services ("medical services") after the deposit payments of $23,000 were taken into account. Of the amount claimed, $128,728.50 was described as being doctors' fees.

10 While the patient was still hospitalised, the second respondent underwent a corporate restructuring, in consequence of which the second respondent transferred and assigned all its assets to the first respondent with effect from 1 October 2004. The hospital was thereafter registered as a business of the first respondent, who operated the hospital and provided medical services to the patient. Neither the first nor the second respondent gave the appellant any written notice of the assignment.

11 The patient failed to pay the invoice and this suit was thus brought against the appellant on the basis of the contract and the undertaking contained therein. The first respondent further pleaded

that the sum of $537,432.34 had been transferred and assigned by the second respondent to the first respondent on 1 October 2004.

12 The appellant denied liability on numerous grounds. She contended, *inter alia*, that the scope and ambit of the undertaking was limited only to the charges, expenses and liabilities incurred by or on behalf of the patient in relation to the angioplasty procedure and the estimated two days of hospitalisation after the angioplasty procedure. The appellant further averred that she had not been informed of the assignment of her debt to the first respondent, and that the first respondent's claim was unconscionable.

13 When the matter came on for trial, the appellant elected not to offer any evidence. It was at this point that the first respondent applied to amend the writ of summons and pleadings by adding the second respondent as co-plaintiff. The Judge proceeded to allow the application despite the appellant's objections. In the Judge's opinion, it was clear from the beginning of the action that the first respondent was suing as an assignee, and the problem of non-joinder was a technical one (see GD at [13]).

14 The Judge took the view that the contract was binding, and that the appellant was liable to pay for all medical services provided by the second respondent to the patient by reason of the undertaking contained therein. The wording of the undertaking made it plain that no limit would be imposed on the appellant's liability to pay (see GD at [27] and [30]).

15 However, the Judge only gave judgment for the respondents in the sum of $320,083.77, with interest at 6% from the date of the writ and costs on an indemnity basis. The judgment sum of $320,083.77 was arrived at by making the following three deductions from the sum of $537,432.34 claimed:

(a) $88,452.04 for medical expenses incurred after 1 October 2004, as these services had been provided by the first respondent with whom the appellant had no agreement. The scope of the undertaking was confined to medical services provided by the second respondent from 7 January 2004 to 1 October 2004 (*ie*, before the assignment);

(b) $128,728.50 being fees of the doctors, with whom the appellant had no contract; and

(c) $168 being charges for ambulance services not provided by the respondents.

**The ambit and scope of the contract**

16 The present appeal raised one basic issue – what was the true construction of the contract between the appellant and the second respondent? More specifically, was the ambit and scope of the contract confined (as the appellant argued) only to expenses related to the angioplasty procedure or did the contract cover all the expenses incurred (as the respondents argued)?

17 Not surprisingly, each party focused only on specific portions of the contract.

18 We find the construction advanced by the appellant to be the correct one, having regard to the language as well as the context of the contract itself.

19 Whilst Mr Lek Siang Pheng, counsel for the respondents, argued that the undertaking by the appellant as guarantor covered "all charges, expenses and liabilities incurred by and on behalf of the patient", this argument alone is not conclusive. The focus, in our view, ought not to be on the word

"all" but, rather, on the *type* of charges, expenses and liabilities that the parties intended to be covered under the contract. This was the threshold question that ought to have been asked. It would then follow that the appellant would be liable for *all* of the charges *that fell within the ambit and scope of the contract*.

20 Mr Lek also focused on the first paragraph of the contract (under the heading "Financial Obligation"). In particular, he referred to the first sentence, which reads as follows:

> The undersigned is liable to pay the account of the hospital immediately upon his discharge in accordance with the prevailing rates and terms of the hospital.

21 Once again, however, the above sentence is, in the context of the basic issue in the present appeal, neutral at best. It is true that the patient is liable to pay the hospital for services rendered. However, the *ambit and scope* of the services rendered has to be ascertained by reference to the *contract* itself.

22 It is important, at this juncture, to note that the appellant, in admitting in her case before this court that the patient was liable to the hospital for the entire amount of the treatment received, was *not* conceding that the source of that liability was to be found in the *contract* itself. Mr James Ponniah, counsel for the appellant, argued that the contract only covered liability for the angioplasty procedure. However, he admitted that the patient (as opposed to the appellant in her capacity as guarantor) would be legally liable for the rest of the treatment she received under the common law (presumably, the law of restitution). In so far, therefore, as the present appeal was concerned, Mr Ponniah argued that it followed that the appellant, as guarantor, was only liable for all expenses incurred pursuant to the angioplasty procedure since that was the ambit and scope of the contract itself.

23 Mr Ponniah in fact relied on the second paragraph of the contract (again, under the heading "Financial Obligation"), which reads as follows:

> The undersigned should obtain an estimate of his/her/the patient's attending physician's/specialist's charges from them. The hospital shall assume upon the receipt of this signed conditions of services/hospital policies form that the undersigned has familiarised himself/herself with the hospital charges and fees and charges of his/her/the patient's attending physician/specialist and that the undersigned appreciates and is fully aware of the financial obligations that he/she is undertaking in relation to his/her/the patient's hospitalisation and treatment.

24 The paragraph just quoted obviously constitutes part of the terms of the contract between the appellant and the second respondent. What is of particular legal as well as logical significance, in our view, is that both parties to the contract obviously intended that both the patient as well as the appellant would familiarise themselves with the *estimated* costs of *the subject matter of the contract*. This gives a clue to the correct construction that ought to be adopted in the context of the present appeal. If, as the respondents argue, the subject matter of the contract extended to cover all items of treatment arising from the complications that had unfortunately arisen, how could the cost of *these* items be *estimated* since, *ex hypothesi*, contingencies that might never have arisen could not be estimated in the first instance? It is clear that when this particular paragraph of the contract is read together with the Estimate, the subject matter of the contract entered into between the appellant and the respondent related to *the angioplasty procedure only*. Indeed, the sum quoted in the Estimate ($15,227.30) clearly referred to the angioplasty procedure – and that procedure only. This is not surprising as that was the procedure for which the patient was initially admitted into the

hospital. It should also be noted that the angioplasty procedure was (in contrast to contingencies and complications that might or might not occur) eminently capable of being estimated and were in fact estimated, as noted above.

25 Mr Lek argued, however, that the Estimate contained a qualification by the second respondent, which reads as follows:

> The Hospital does not warrant that the actual charges payable by the above-named patient upon discharge would be similar to the estimated total charges stated above. This would depend on the final diagnosis, treatment received and the actual length of stay of the patient.

26 It is true that no warranty was given by the second respondent as to the actual charges payable, but neither was the appellant's case founded on a warranty. The pertinent question, in our view, is *what* precisely the actual charges related to. This must, having regard to the context and details of the Estimate itself, be *the angioplasty procedure*. In any event, the actual terms of the Estimate were useful only in so far as they aided this court in ascertaining what the *ambit and scope* of the contract between the appellant and the second respondent was.

27 Finally, we observe that had the respondent desired to cover such contingencies as occurred in the present case, it could have inserted an appropriate term to that effect in the contract. Indeed, it had taken pains to cover a different contingency which was more unlikely and less fundamental than that which was at issue in the present appeal in the form of the following clause:

> The undersigned further authorises the hospital to apply any excess funds after payments in full of the charges for services rendered for this hospital visit towards any outstanding account which the patient may have with any of the hospitals of the Parkway Group Healthcare Pte Ltd for any prior and/or subsequent services rendered and for which the undersigned is responsible.

**Relevance of the factual matrix when construing contracts**

28 A general legal issue that arose was whether or not this court was entitled to go outside the four corners of the contract between the appellant and the second respondent. Mr Lek argued that the terms of the contract were clear and that the court could not therefore refer to any other documents or surrounding circumstances. We would therefore be constrained to look only at the terms of the contract itself in order to ascertain whether the appellant should be liable for all the expenses incurred by the patient during her stay at the hospital. With respect, we are not persuaded that this is the case.

29 It is clear that, at *common law*, it has always been open to the court to have recourse to extrinsic material where such material would aid in establishing the factual matrix which would (in turn) assist the court in construing the contract in question. This assumes, of course, that the reference to such material would not result in the contravention of the parol evidence rule which is statutorily embodied within ss 93 and 94 of the Evidence Act (Cap 97, 1997 Rev Ed) ("the Act"). This is, in fact, precisely the situation in the present case. The key concept here is that of *context*. No contract exists in a vacuum and, consequently, its language must be construed in the context in which the contract concerned has been made. We would go so far as to state that even if the plain language of the contract appears otherwise clear, the construction consequently placed on such language should not be inconsistent with the context in which the contract was entered into if this context is clear or even obvious, since the context and circumstances in which the contract was made would reflect the intention of the parties when they entered into the contract and utilised the (contractual) language they did. It might well be the case that if a particular construction placed on

the language in a given contract is inconsistent with what is the obvious context in which the contract was made, then *that* construction might *not* be as clear as was initially thought and might, on the contrary, be evidence of an ambiguity. The following observations by Lord Hoffmann in the House of Lords decision of *Charter Reinsurance Co Ltd v Fagan* [1996] 2 WLR 726 at 762 are also apposite:

> I think that in some cases the notion of words having a natural meaning is not a very helpful one. Because the meaning of words is so sensitive to syntax and context, the natural meaning of words in one sentence may be quite unnatural in another. Thus a statement that words have a particular natural meaning may mean no more than that in many contexts they will have that meaning. In other contexts their meaning will be different but no less natural.

30 In addition, and on a more general level, the following observations by Lord Wilberforce in the leading House of Lords decision of *Reardon Smith Line Ltd v Yngvar Hansen-Tangen* [1976] 1 WLR 989 at 996 ("*Reardon Smith*") emphasise the general task of the court in a practical and functional manner:

> It is often said that, in order to be admissible in aid of construction, these extrinsic facts must be within the knowledge of both parties to the contract, but this requirement should not be stated in too narrow a sense. When one speaks of the intention of the parties to the contract, one is speaking objectively – the parties cannot themselves give direct evidence of what their intention was – and what must be ascertained is what is to be taken as the intention which reasonable people would have had if placed in the situation of the parties. Similarly when one is speaking of aim, or object, or commercial purpose, one is speaking objectively of what reasonable persons would have in mind in the situation of the parties.

3 1 Indeed, as a leading textbook put it (see *Chitty on Contracts* vol 1 (Sweet & Maxwell, 29th Ed, 2004) at para 12-118):

> The willingness of the courts to admit extrinsic evidence as an aid to interpretation of a written contract was established as long ago as 1842 by Tindal C.J. in *Shore v Wilson,* [(1842) 9 Cl 7 Fin 355] …
>
> But under the older restrictive view … extrinsic evidence is admissible only where the sense and meaning of the words of the written instrument is doubtful or difficulty arises when it is sought to apply the language of the instrument to the circumstances under consideration. If the words have a clear and fixed meaning, not capable of explanation, extrinsic evidence would not be admissible to show that the parties meant something different from what they have written. *The more modern view, however, is that the words do not have to be vague, ambiguous or otherwise uncertain before extrinsic evidence will be admitted. Since the purpose of the inquiry is to ascertain the meaning which the words would convey to a reasonable man against the background of the transaction in question, the court is free (subject to certain exceptions) to look at all the relevant circumstances surrounding the transaction, not merely in order to choose between the possible meanings of words which are ambiguous but even to conclude that the parties must, for whatever reasons, have used the wrong words or syntax. So the court is entitled (and, indeed, bound) to enquire beyond the language of the document and see what the circumstances were with reference to which words were used, and the object appearing from those circumstances which the person using them had in view. The court must place itself in the same "factual matrix" as that in which the parties were*.
>
> [emphasis added]

32 Significantly, there follow extracts from the judgment of Lord Wilberforce in *Reardon Smith*, which are in fact included in the reference below (at [34]). It is worthy to note that I had endorsed this common law principle in the recent High Court decision of *China Insurance Co (Singapore) Pte Ltd v Liberty Insurance Pte Ltd* [2005] 2 SLR 509, albeit by way of *dicta* (at [51]). We are of the view that the "more modern view" referred to in the above quotation is to be preferred and that, as we have explained above, such a view is also consistent with what would be the practical reality in any event.

3 3 The established common law principle referred to above is also applicable as it is not inconsistent with the provisions of the Act since, *ex hypothesi*, the court is not seeking to utilise such material to add to, vary or contradict the terms of the contract itself – courses of action that would be at odds with s 94 of the Act (see also *Chitty on Contracts* ([31] *supra* at para 12-117)). In this regard, s 2(2) of the Act is relevant, and reads as follows:

> All rules of evidence not contained in any written law, so far as such rules are inconsistent with any of the provisions of this Act, are repealed.

3 4 The principle itself has been reiterated in many cases. Perhaps the most famous articulation is to be found in the judgment of Lord Wilberforce in *Reardon Smith* ([30] *supra*), where the learned law lord observed thus (at 995 and 997):

> When it comes to ascertaining whether particular words apply to a factual situation or, if one prefers, whether a factual situation comes within particular words, it is undoubtedly proper, and necessary, to take evidence as to the factual situation.
>
> …
>
> No contracts are made in a vacuum: there is always a setting in which they have to be placed. The nature of what is legitimate to have regard to is usually described as "the surrounding circumstances" but this phrase is imprecise: it can be illustrated but hardly defined. In a commercial contract it is certainly right that the court should know the commercial purpose of the contract and this in turn presupposes knowledge of the genesis of the transaction, the background, the context, the market in which the parties are operating.
>
> …
>
> I think that all of their Lordships are saying, in different words, the same thing – what the court must do must be to place itself in thought in the same factual matrix as that in which the parties were. All of these opinions seem to me implicitly to recognise that, in the search for the relevant background, there may be facts which form part of the circumstances in which the parties contract in which one, or both, may take no particular interest, their minds being addressed to or concentrated on other facts so that if asked they would assert that they did not have these facts in the forefront of their mind, but that will not prevent those facts from forming part of an objective setting in which the contract is to be construed.

35 Reference may also be usefully made to the views of Lord Hoffmann in the leading House of Lords decision of *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896 at 912–913, as follows:

> But I think I should preface my explanation of my reasons with some general remarks about the principles by which contractual documents are nowadays construed. I do not think that the

fundamental change which has overtaken this branch of the law, particularly as a result of the speeches of Lord Wilberforce in *Prenn v. Simmonds* [1971] 1 W.L.R. 1381, 1384-1386 and *Reardon Smith Line Ltd v Yngvar Hansen-Tangen* [1976] 1 W.L.R. 989, is always sufficiently appreciated. The result has been, subject to one important exception, to assimilate the way in which such documents are interpreted by judges to the common sense principles by which any serious utterance would be interpreted in ordinary life. Almost all the old intellectual baggage of "legal" interpretation has been discarded. The principles may be summarised as follows.

(1) Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.

(2) The background was famously referred to by Lord Wilberforce as the "matrix of fact", but this phrase is, if anything, an understated description of what the background may include. Subject to the requirement that it should have been reasonably available to the parties and to the exception to be mentioned next, it includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man.

(3) The law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent. They are admissible only in an action for rectification. The law makes this distinction for reasons of practical policy and, in this respect only, legal interpretation differs from the way we would interpret utterances in ordinary life. The boundaries of this exception are in some respects unclear. But this is not the occasion on which to explore them.

(4) The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax: see *Mannai Investments Co. Ltd. v. Eagle Star Life Assurance Co. Ltd.* [1997] A.C. 749.

(5) The "rule" that words should be given their "natural and ordinary meaning" reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had. Lord Diplock made this point more vigorously when he said in *Antaios Compania Naviera S.A. v. Salen Rederierna A.B.* [1985] A.C. 191, 201:

> "if detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business commonsense, it must be made to yield to business commonsense."

36 However, Lord Hoffmann did, in the subsequent House of Lords decision of *Bank of Credit and Commerce International SA v Ali* [2002] 1 AC 251 state (at [39]) that while "there is no conceptual limit to what can be regarded as background", he was "certainly not encouraging a trawl through 'background' which could not have made a reasonable person think that the parties must have

departed from conventional usage".

37 It is clear, in our view, that the common law principle, whose purpose and rationale is set out in the case law above, is applicable to the present appeal. In particular, this court is justified in looking at, *inter alia*, the Estimate in order to arrive at the conclusion that the *factual matrix* clearly demonstrated that the ambit and scope of the contract between the appellant and the respondent was confined to the angioplasty procedure. In so doing we are not suggesting that the Estimate was cast in stone. Thus if the patient had stayed in hospital a few days longer than the estimated two days, it could not be argued that that was not within the bounds of reasonable foreseeability. In contrast, in the absence of evidence to that effect, the open heart surgery could not be said to have been reasonably foreseeable by the parties.

**Remaining issues**

38 Before we conclude, it is appropriate to deal briefly with the appellant's other arguments.

3 9 One argument was to the effect that the respondents' claim was unconscionable. With respect, this particular argument was framed in overly broad as well as vague terms. We should point out that the doctrine of unconscionability is still in flux, at least in the Commonwealth context. Further, its relationship to more established doctrines such as economic duress as well as undue influence has yet to be worked out. It will suffice for the purposes of the present appeal to observe that, even if the doctrine is taken at its broadest level (articulated, most notably, in the Australian context, especially in the leading High Court decision of *The Commercial Bank of Australia Limited v Amadio* (1983) 151 CLR 447), we find nothing in the circumstances surrounding the entry of the appellant into the contract concerned which would lead us to a finding of unconscionable conduct on the part of the second respondent. Neither was it unconscionable for the respondents to enforce the terms of the undertaking against the appellant. We should add that mere inequality of bargaining power is insufficient, in and of itself, to constitute unconscionable conduct. Indeed, we agree with the respondents that both the patient as well as the appellant had received adequate advice and that the appellant, in particular, had fully understood the terms of the contract she had entered into with the second respondent. We should emphasise that the conduct of the second respondent throughout was thoroughly professional, including the pursuit of what it believed to be its legal rights. The real issue relates, rather, to the scope and ambit of the contract – an issue that we have already dealt with in some detail above.

4 0 The other argument centred on the Judge's exercise of her discretion in permitting the first respondent to amend its writ and pleadings to add the second respondent as co-plaintiff after the appellant had elected not to give evidence and had closed her case. It was clear that the first respondent had no *locus standi* to sue the appellant in its own name on the ground that at the highest it was only an equitable assignee of the second respondent's claim against the patient suing on the basis of a legal chose in action (and see *Halsbury's Laws of Singapore* vol 7 (LexisNexis, 2005) at [80.446]). The validity of the assignment as an equitable assignment was not in dispute: see *per* Lord Macnaghten in the House of Lords decision of *William Brandt's Sons & Co v Dunlop Rubber Company, Limited* [1905] AC 454 at 461. The Judge had exercised her discretion to add the second respondent as co-plaintiff in order to provide the legal right necessary to support the first respondent's claim because she considered it as a technical matter. We cannot say that her exercise of discretion in this respect was wrong so long as the appellant was not prejudiced by the decision. In the present case, the appellant has not contended that the claim would have been time-barred but for the addition of the second respondent as a party to the action.

**Conclusion**

41 In the premises, we allow the appeal with costs here and below, with the usual consequential orders to follow.