Wang Weidong *v* SPM Global Services Pte Ltd and another
[2018] SGHCR 6

Case Number : Suit No 698 of 2016 (Summons No 1647 of 2018)

Decision Date : 02 May 2018

Tribunal/Court : High Court

Coram : Justin Yeo AR

Counsel Name(s) : Mr Wong Teck Ming (RHTLaw Taylor Wessing LLP) for the Plaintiff; Mr Koh Junxiang and Ms Kam Kai Qi (Clasis LLC) for the 2nd Defendant.

Parties : Wang Weidong — SPM Global Services Pte Ltd — Mark Aldie Stiffler

Civil Procedure – Pleadings – Amendment

2 May 2018 Judgment reserved.

Justin Yeo AR:

1 This is the Plaintiff's application under O 20 r 5(5) of the Rules of Court (Cap 322, R 5, Rev Ed 2014) ("Rules of Court") for the amendment of his Statement of Claim to, *inter alia*, add a new cause of action (*viz*, an allegation that a company's director is personally liable for the tort of inducing his company's breach of contract). The key issues raised relate to:

(a) whether the new cause of action has been sufficiently pleaded so as to disclose a reasonable cause of action; and

(b) whether the addition of the new cause of action at a late stage of the proceedings was an unjustifiable decision to "litigate incrementally" which amounted to an abuse of process.

Background Facts

2 Wang Weidong ("the Plaintiff") is the registered owner of a piece of property in Central Boulevard ("the Premises"). SPM Global Services Pte Ltd ("the 1st Defendant") is a company incorporated in Singapore, in the business of the sale of sales performance management software and services. Mark Aldie Stiffler ("the 2nd Defendant") was the Managing Director and sole shareholder of the 1st Defendant. The 1st Defendant uses and occupies the Premises as a private residence and home office of the 2nd Defendant.

3 The Plaintiff and the 1st Defendant had entered into a tenancy agreement in relation to the Premises, dated 4 November 2015 ("the Tenancy Agreement"). According to the Plaintiff, the 1st Defendant failed to pay rent and disavowed the Tenancy Agreement on 9 May 2016. The Plaintiff gave the Defendants a notice period of 14 days to vacate the Premises, but upon expiry of the notice period, the Defendants failed to vacate the Premises. The Plaintiff therefore commenced the present suit on 4 July 2016.

4 The Plaintiff repossessed the Premises on 27 January 2017, but the Defendants subsequently re-entered the Premises on 1 February 2017 without the Plaintiff's permission. The Plaintiff thus

repossessed the Premises again on 8 February 2017. On 20 April 2017, a High Court Judge ordered the deactivation of the access cards issued to the Defendants.

5 The 1st Defendant underwent voluntary winding up on 5 June 2017.

6 The Plaintiff amended the Statement of Claim on 8 September 2017 by agreement between the parties (*ie* pursuant to O 20 r 12 of the Rules of Court), to include additional causes of action arising from the Defendants' trespass of the Premises.

7 Subsequently, the Plaintiff took out an application ("the Earlier Amendment Application") to further amend the Statement of Claim, seeking to add various causes of action, *viz*, that the 2nd Defendant had induced the 1st Defendant to breach its obligations under the Tenancy Agreement, that a certain clause of the Tenancy Agreement was unenforceable, and that the Defendants had conspired and engaged in a course of conduct to injure the Plaintiff. The Earlier Amendment Application was heard by the same High Court Judge on 13 February 2018. After the 2nd Defendant's counsel had made submissions on the application, the Plaintiff's counsel withdrew the application. According to the Plaintiff, the withdrawal was sought because it had emerged during the course of the hearing that there were difficulties with having too many causes of action introduced through the proposed amendments. [note: 1] The Plaintiff's uncontroverted evidence is that the withdrawal was without prejudice to his right to file a fresh application for amendment. [note: 2]

8 On 9 April 2018, the Plaintiff brought the present application ("the Application") to make several typographical and grammatical amendments to the Statement of Claim, as well as to introduce an additional cause of action against the 2nd Defendant relating to the tort of inducement of breach of contract. The 2nd Defendant contested only the amendments relating to the additional cause of action. The principal amendment being contested is found in para 15 of the Statement of Claim ("the Contested Amendment"), as follows:

> 15. In breach of the TA [*ie* the Tenancy Agreement], the 1st Defendant failed and /or refused to pay rent when it first became due by 23 February 2016 and also when rent was due on the 1st day of each subsequent month. The 2nd Defendant, being the sole director and the sole shareholder of the 1st Defendant, was at all material times fully aware of the terms and conditions of the TA and the 1st Defendant's contractual obligations to pay rent to the Plaintiff in accordance with the aforesaid terms and conditions. As such, further and/or in the alternative, the 2nd Defendant directly caused, induced and/or procured the 1st Defendant to breach its contractual obligations under the TA to furnish rent to the Plaintiff for the 2nd Defendant's personal gain. In so doing, the 2nd Defendant did not genuinely and honestly endeavour to act in the 1st Defendant's best interests. As a result, the 1st Defendant failed and /or refused to pay rent when it first became due by 23 February 2016 and also when rent was due on the 1st day of each subsequent month (emphasis in original)

Issues

9 In a contested application for leave to amend pleadings, the principles to be applied akin to those which apply if the application had been to strike out the amended pleadings (*Jeyaretnam Joshua Benjamin v Lee Kuan Yew* [1990] 1 SLR(R) 337 ("*Jeyaretnam Joshua Benjamin*") at [4]). In

this regard, counsel for the 2nd Defendant, Mr Koh Junxiang ("Mr Koh"), objected to the Contested Amendment on two grounds: first, that it did not disclose a reasonable cause of action; and second, that it amounted to an abuse of process. I address these two issues in the remainder of this Judgment.

Whether reasonable cause of action disclosed

10 The first issue is whether the Contested Amendment has been sufficiently pleaded so as to disclose a reasonable cause of action.

Parties' Arguments

11 It is undisputed between the parties that to establish a claim in tort for inducement of breach of contract, the Plaintiff had to demonstrate the two-fold criteria in *Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 2 SLR(R) 407 ("*Tribune Investment Trust Inc*") at [17], *viz* that the 2nd Defendant had (a) acted with the requisite knowledge of the existence of the contract, although knowledge of the precise terms is not necessary; and (b) intended to interfere with the performance of the contract, such intention being objectively determined.

12 Mr Koh argued that in the context of a director's personal tortious liability in respect of contractual breaches by his company, a director is exempt from such liability if he had not acted in breach of any fiduciary or legal duties owed to their company (citing *PT Sandipala Arthaputra v STMicroelectronics Asia Pacific Pte Ltd and others* [2018] SGCA 17 ("*PT Sandipala Arthaputra*") at [62], which affirmed the principle in *Said v Butt* [1920] 2 KB 497). The onus is on the Plaintiff to prove that the 2nd Defendant had acted in breach of personal legal duties to the company (citing *PT Sandipala* at [65]). In this regard, the Contested Amendment failed to set out in any detail how the 2nd Defendant can be said to have breached any of his duties to the 1st Defendant; it was, instead, merely a bare allegation that the 2nd Defendant had "caused, induced and/or procured" the 1st Defendant's breach for the 2nd Defendant's "personal gain", and that the 2nd Defendant did not "genuinely and honestly endeavour to act in the 1st Defendant's best interests". On the authority of *Chong Hon Kuan Ivan v Levy Maurice and others* [2004] 4 SLR 801 ("*Chong Hon Kuan Ivan*") (which was also cited by the Court of Appeal in *PT Sandipala Arthaputra*), such a bare allegation falls far short of disclosing any reasonable cause of action and is doomed to fail. [note: 3]

13 Counsel for the Plaintiff, Mr Wong Teck Ming ("Mr Wong"), argued that the Contested Amendment was material to defining the real questions in issue between the Plaintiff and the Defendants, and that it would be in the interests of justice to have all facts, details and causes of action pleaded and tried at the trial (citing *Wright Norman and another v Overseas-Chinese Banking Corp Ltd* [1993] 3 SLR(R) 640 ("*Wright Norman*")). Mr Wong further contended that the Contested Amendment had sufficiently pleaded the cause of action for inducement of breach of contract. This was because it was accepted by the parties that the Tenancy Agreement was a valid and binding contract between the Plaintiff and the 1st Defendant, and that the 2nd Defendant was fully aware of the existence of the Tenancy Agreement. There were also strong grounds for inferring that the 2nd Defendant was the sole decision-maker and wielded control and influence over the 1st Defendant's operations, including whether the 1st Defendant should release funds to the Plaintiff to settle accrued rental under the Tenancy Agreement. In Mr Wong's view, it would be "extremely unbelievable" for the 2nd Defendant to take the position that he was *not* in charge of the 1st Defendant's decisions, management and day-to-day operations. [note: 4] In the circumstances, the Contested Amendment

disclosed a cause of action that was "reasonably sound with a probable, if not high, chance of success". [note: 5]

Decision

14 The Contested Amendment is the Plaintiff's attempt to introduce a new cause of action that a director (*viz*, the 2nd Defendant) is liable in tort for inducing his company (*viz*, the 1st Defendant) to breach its contract with the Plaintiff. The onus is therefore on the Plaintiff to demonstrate that the cause of action has been sufficiently pleaded in his proposed amendment. If the amendment discloses no reasonable cause of action, it should not be allowed (see *Jeyaretnam Joshua Benjamin* at [4]).

15 *Chong Hon Kuan Ivan* provides instructive guidance on the sufficiency of pleadings in the specific context of pleading that a director had acted outside the scope of his office (which is, in itself, a key element of demonstrating that the director ought to be personally liable for the tort of inducing the company's breach of contract). In that case, the court was faced with a proposed amendment to the statement of claim to plead that the defendant-directors had, with "the sole or predominant intention" of injuring the plaintiff, induced the company to terminate the plaintiff's employment. The plaintiff had purported to particularise this claim by alleging that the defendant-directors had acted "outside the scope of their office or employment", in view that (a) they had reached an agreement on certain specific dates to procure the termination of the plaintiff's employment; and (b) prior to a certain board meeting, two or more of the defendant-directors had agreed to terminate the plaintiff's contract, with one of them informing the plaintiff that he would be dismissed if he refused to accept a certain settlement proposal. The court found that the allegations that the defendant-directors' conduct was outside the scope of their office were "mainly bare allegations" (*Chong Hon Kuan Ivan* at [45]). For instance, the reference to the refusal to accept the settlement proposal was not, without more, outside the scope of office of a director of the company (*Chong Hon Kuan Ivan* at [45]). In the circumstances, the court disallowed the proposed amendments.

16 In my view, the Contested Amendment does not disclose a reasonable cause of action, for two reasons.

17 First, the Contested Amendment contained only a vague allusion to the fact that the 2nd Defendant "did not genuinely and honestly endeavour to act in the 1st Defendant's best interests". No particulars were furnished as to how the 2nd Defendant can be said to have breached any of his personal legal duties to the 1st Defendant, in particular, in relation to the payment of rent. The Contested Amendment therefore provided even less detail than the proposed amendments that had been rejected in *Chong Hon Kuan Ivan*. While Mr Wong argued that the 2nd Defendant was in all likelihood in charge of the 1st Defendant's decisions, management and day-to-day operations (see [13] above), these did not – without more – mean that the 2nd Defendant had acted outside the scope of his office as a director of the 1st Defendant.

18 Second, the Plaintiff's allegation that the 2nd Defendant had induced the contractual breach for "personal gain" is pleaded generally and without any detail. When queried on what "personal gain" was being referred to, Mr Wong explained that the "personal gain" was the benefit that the 2nd Defendant enjoyed by staying "rent-free" on the Premises without incurring liability for breach of contract (which would be incurred only by the 1st Defendant, as a separate legal entity). I make three observation on this point.

(a) It appears that the reference to "personal gain" was meant to go towards demonstrating that the 2nd Defendant had intended to interfere with the performance of the Tenancy Agreement (which is the second element for establishing tortious liability for inducement of breach of contract pursuant to *Tribune Investment Trust Inc* – see [11] above). If so, the alleged "personal gain" should be pleaded in greater detail.

(b) It is unclear as to how the "rent-free" stay on the Premises was a "personal gain" to the 2nd Defendant. Given that the Plaintiff has pleaded that the Premises was used *inter alia* as "a home office of the 2nd Defendant", [note: 6] it appears *prima facie* that the "gain" from the breach of contract, if any, was to *both* Defendants.

(c) The Plaintiff's intended meaning of "personal gain" appears to be too broad, as it would potentially apply in every case concerning a company with a sole director and shareholder. On the Plaintiff's argument, wherever such a company breaches a contract, the director should be considered to have intended to interfere with the performance of the contract in question. This is because the company would have incurred liability for contractual breach, while the director would have enjoyed the benefits flowing from such breach without incurring any accompanying liability. If such an allegation of "personal gain" were sufficient to establish a director's intentions in inducing contractual breaches by his company, it would severely weaken the protection afforded by the principle in *Said v Butt*.

19 I therefore disallow the Contested Amendment on the basis that it fails to disclose a reasonable cause of action.

Whether abuse of process

20 My finding in the preceding section is sufficient, in and of itself, to dispose of the Application. However, as Mr Koh had fleshed out written arguments in relation to abuse of process, I turn to consider the issue of whether the addition of the Contested Amendment was an unjustifiable decision to "litigate incrementally" which amounted to an abuse of process.

Parties' Arguments

21 In this regard, Mr Koh contended that the Contested Amendment amounted to an abuse of process for three reasons:

(a) First, the Contested Amendment was, in effect, the Plaintiff's attempt to seek a "second bite at the cherry", and such amendments should not be allowed (citing *Asia Business Forum Pte Ltd v Long Ai Sin* [2004] 2 SLR(R) 173 ("*Asia Business Forum*")). For one-and-a-half years, the Plaintiff had pursued the claim for unpaid rent and interim payment solely against the 1st Defendant. [note: 7] It was only following the 1st Defendant's voluntary winding up that the Plaintiff attempted to "circumvent the insolvency regime" by pursuing the unpaid rent claim against the 2nd Defendant, when the 2nd Defendant was not himself a party to the Tenancy Agreement. [note: 8] The Plaintiff was therefore seeking to introduce the issue of unpaid rent in another form to be "re-litigated" between the 2nd Defendant and himself. [note: 9]

(b) Second, it was an abuse of process to litigate incrementally, unless the decision to do so is reasonable and *bona fide* (citing *Antariksa Logistics Pte Ltd and others v Nurdian Cuaca and*

others [2017] SGHC 60 ("*Antariksa*")). In this regard, the Plaintiff had provided no satisfactory justification for why he chose to litigate the issue of unpaid rent incrementally – first against the 1st Defendant, and only now against the 2nd Defendant. [note: 10]

(c) Third, the Contested Amendment was based on a claim that the Plaintiff, exercising reasonable diligence, might have brought forward earlier (citing *Goh Nellie v Goh Lian Teck and others* [2007] 1 SLR(R) 453 at [51]). The fact that Plaintiff's present counsel might have advised him differently from the Plaintiff's previous counsel was not sufficient to justify belatedly introducing a new cause of action. [note: 11]

22 Mr Wong contended that the Contested Amendment did not cause any unfairness or prejudice to the Defendants which could not be compensated by costs. This was because the Contested Amendment arose from substantially the same facts that have already been pleaded. He further argued that while the ground for the new claim existed since the commencement of the present suit, this cause of action was being introduced pursuant to a "completely fresh study" of the suit by Plaintiff's present counsel, who had taken over conduct of the matter only in November 2017. The Plaintiff should not be precluded from bringing the claim as a means of punishment for his errors or the errors of his solicitors (citing *Wright Norman* at [25]). While delay has been occasioned, delay *per se* did not amount to prejudice or injustice to the 2nd Defendant (citing *Review Publishing Co Ltd and another v Lee Hsien Loong and another appeal* [2010] 1 SLR 52 at [114]).

Decision

23 In my view, the Contested Amendment does not amount to an abuse of process. I make four observations in this regard.

24 First, the Contested Amendment was not a second bite at the cherry. This is borne out by an examination of the decision (*viz*, *Asia Business Forum*) cited by Mr Koh for the "second bite" argument.

(a) In *Asia Business Forum*, the amendments to pleadings were sought to be made at the appeal stage, *after* a full trial on the merits of the claims had been concluded. Even at such a late stage, the Court of Appeal recognised that amendments may be allowed post-judgment if there were sufficiently strong grounds to justify such amendments (*Asia Business Forum* at [12]). However, as the amendments in question would alter the premises of the claims that had been tried by the court below, allowing the amendments would render the trial court's findings altogether "immaterial" (*Asia Business Forum* at [16]). This would "[deprive the Court of Appeal] of the benefits of the opinion of the court below" and require the Court of Appeal to "examine the claim almost from scratch" (*Asia Business Forum* at [16]). It was in these circumstances that the Court of Appeal regarded the amendments as a "clear case of… seeking a second bite at the cherry" (*Asia Business Forum* at [19]).

(b) In contrast, in the present case, affidavits of evidence-in-chief have yet to be drafted or exchanged, and the present suit has yet to be set down and fixed for trial. The cherry has not, in a manner of speaking, been bitten at all; it follows that the Contested Amendment would not constitute a second bite at the cherry.

(c) For the avoidance of doubt, the withdrawal of the Earlier Amendment Application also cannot be considered the first bite at the cherry, since the application was withdrawn before its merits were determined (see [7] above).

25 Second, the Contested Amendment was not an unjustifiable attempt at "incremental litigation". As Mr Koh relied entirely on *Antariksa* as a basis for the "incremental litigation" argument, it is necessary to examine *Antariksa* in greater detail. The key points of relevance for present purposes may be summarised as follows:

(a) In assessing the propriety of incremental litigation, what is required is a "broad, merits-based judgment", with an "intense focus on the facts of the case" (*Antariksa* at [100]).

(b) As a general rule, a litigant ought not to be deprived of an opportunity to litigate a *bona fide* claim or of his autonomy in deciding when, how and against whom he wishes to bring such a claim, although such autonomy is subject to the following limits (*Antariksa* at [101]–[104]):

(i) The decision to bring claims incrementally must be both reasonable and *bona fide*. The failure to bring the later claims in an earlier set of proceedings should not be due to negligence or inadvertence. Rather, the decision should be deliberate, reasoned, and sensible (from both commercial and practical perspectives), and should be sufficient to override the competing public interest in economy of litigation.

(ii) The incremental litigation must not undermine one of the aims of the extended doctrine of *res judicata*, *viz*, to avoid bringing the justice system into disrepute. As such, incremental litigation should not result in the duplicative determination of the same underlying issues of fact, as this would give rise to the possibility of inconsistent judgments between different courts examining the same matter.

(c) It must be kept in mind that the above propositions were made in the context of incremental litigation being brought where *earlier proceedings*, including *appeals therefrom*, had already been concluded. Indeed, when setting out the requirements of reasonableness and *bona fides*, the Court expressly referred to a "failure to bring the later claims *in an earlier set of proceedings*" (emphasis added), and the need to weigh the reasons for the amendment against the "competing public interest consideration of economy of litigation" (*Antariksa* at [102]). In relation to the concerns about duplicative determination of issues and the possibility of inconsistent judgments, these stem from the extended doctrine of *res judicata*, which is a doctrine aimed at precluding the bringing of litigation in relation to a matter which properly belonged to the subject of *earlier litigation.* Against this backdrop, the limits on a party's autonomy to pursue "incremental litigation" as identified in *Antariksa* ought to feature less prominently, if at all, in assessing the propriety of an amendment brought *prior* to any trial or adjudication of the dispute at hand.

(d) In the present case, there has been no earlier trial or adjudication of matters relating to the dispute at hand, where the new claim could arguably have been litigated. There is no risk whatsoever of inconsistent judgments, given that the merits of the initial claims have yet to be determined. Indeed, given that affidavits of evidence-in-chief have yet to be drafted or exchanged, and the present suit has yet to be set down and fixed for trial, it is difficult to see how there can be any concerns relating to "re-litigation" or "incremental litigation".

26 Third, there is no rule against trying to recover a single set of losses from one defendant, and to sue other defendants only if the initial action failed (*Antariksa* at [136]). Indeed, in *Antariksa*, the court emphasised that this issue did not affect its decision on whether the amendments in question amounted to an abuse of process, emphasising that an action "cannot be abusive on this ground alone" (*Antariksa* at [136]). *A fortiori*, in view that the Contested Amendments are being brought *even before* the Plaintiff's attempt to recover loss from the 1st Defendant has been tried and

adjudicated upon, the Contested Amendment cannot be considered abusive on this ground. On a related note, any liability found under the Contested Amendment would be in relation to the 2nd Defendant's *personal* liability for inducing the 1st Defendant's breach of contract; as such, I could not see how the Contested Amendment amounted to an attempt to "circumvent the insolvency regime". [note: 12]

27 Finally, I acknowledge Mr Koh's point that a change of counsel does not provide a *carte blanche* for new causes of action to be added. However, whether such amendment introducing a new cause of action is brought about by a change of counsel looking afresh at the case should rarely be determinative on its own. Of course, where the introduction of a new cause of action is sought very late in the day or only after the trial, a change of counsel would not be sufficient to justify allowing such an amendment (see, *eg*, *Asia Business Forum* at [19], where the amendment was sought post-trial). This is not a standalone principle, but rather, part of the larger principle that whether an amendment ought to be allowed depends on all the circumstances of the case. In the present case, the Contested Amendment cannot be said to be brought late in the day (see [25(d)] above); against this backdrop, the fact that it has been brought only after the Plaintiff's present counsel had taken over conduct of the matter does not assist in determining whether the amendment is an abuse of process.

28 For the foregoing reasons, I find that the Contested Amendment does not amount to an abuse of process.

Conclusion

29 I therefore disallow the Contested Amendment as it discloses no reasonable cause of action. The remaining amendments are allowed in view that the 2nd Defendant has not objected to these. I will hear parties on costs.

[note: 1] Affidavit of Wang Weidong (dated 9 April 2018) at para 19.

[note: 2] Affidavit of Wang Weidong (dated 9 April 2018) at para 19.

[note: 3] Plaintiff's written submissions (dated 18 April 2018), at para 21.

[note: 4] Plaintiff's written submissions (dated 18 April 2018), at para 27.

[note: 5] Plaintiff's written submissions (dated 18 April 2018), at para 29.

[note: 6] Statement of Claim (Amendment No 1) at para 3.

[note: 7] 2nd Defendant's written submissions, at para 26(a) and (b).

[note: 8] 2nd Defendant's written submissions, at para 26(d).

[note: 9] 2nd Defendant's written submissions, at paras 14 and 27.

[note: 10] 2nd Defendant's written submissions, at para 28.

[note: 11] 2nd Defendant's written submissions, at para 29.

[note: 12] 2nd Defendant's written submissions, at para 26(d).

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