IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1993] SGCA 89

CA 82/1992

Between

Wright Norman
Another

… *Appellant*

And

Oversea-Chinese Banking
Corp Ltd

… *Respondent*

GROUNDS OF DECISION

Civil Procedure — Pleadings — Amendment; Civil Procedure — Pleadings — Amendment

Version No 1: 11 Sep 2026 (01:05 hrs)

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Wright Norman and Another v Oversea-Chinese Banking Corp Ltd

[1993] SGCA 89

CA 82/1992
Chao Hick Tin J; Karthigesu JA
30 November 1993

1 Cur Adv Vult

2 This is an appeal against a decision of the judge-in-chambers, reversing an order of the assistant registrar giving the first and third defendants leave to amend their respective defences to this libel action instituted by the plaintiffs. In gist, the issue in this appeal is whether a defence of fair comment in a libel case may be amended to include a plea of justification.

3 This is the third interlocutory matter that has come before this court arising out of the action. The brief facts of the case were succinctly set out by the learned judge below and it would be convenient if we just quote him:

> *On 17 November 1987, the **Business Times** published an article headlined `OCBC plans to recruit four top-ranking bankers`. It was reported that the plaintiff bank was `eyeing` four top-ranking bankers in its recruitment drive though it was stated in the article that the plaintiffs had not officially confirmed what was said in the report.*

4 On 23 November 1987, the ***Business Times*** published an article examining the executive search industry in Singapore. Subsequently, the first

defendant wrote to the ***Business Times*** in response to this article, in a letter which was published on 28 November 1987. In his letter, he made reference to the abovementioned article of 17 November 1987 and made the following remarks:

> *`A case of how not to go about attracting top executives was demonstrated in the front page article which appeared in your 17 November issue regarding OCBC`s reported plans to hire four named senior banking officials. Professional executive search firms would recoil in horror at such publicity.*

5 Your reporter has met his professional duty to `find and report the news`, but there is a prima facie case of rank amateurism or carelessness at OCBC to have allowed such a breach of confidentiality to happen. I doubt that a professional executive search firm would have been involved.

6 It shows clearly how difficult it is for an organization to maintain confidentiality when it conducts its own search. The leakage is potentially damaging to those named, and, at the very least, embarrassing, and the effect on the morale of their present staff and, indeed, on that of the staff at OCBC must be unfortunate.`

> *The plaintiffs took exception to the above remarks which they claimed were defamatory, and commenced proceedings in libel against the defendants.*

7 Further details of the case may be obtained from the judgment of this court reported in [1992] 2 SLR 710 . The earlier two interlocutory applications related to interrogatories, further and better list of documents and discovery. Nothing in those two interlocutory matters has any bearing on the issue in this appeal.

8 The first defendant filed his original defence to the action on 16 January 1988. An amended statement of claim was filed on 15 March 1988 following

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leave to amend given by order of court of 11 March 1988. The first defendant filed his amended defence on 12 April 1988. The third defendant filed its defence on 7 April 1988. Both defendants deny that the words complained of bore any defamatory meaning. In the alternative, they say that the words are fair comment on a matter of public interest. An amended reply was filed by the plaintiffs to the defences of the first and third defendants on 10 September 1988.

9 On 20 February 1992, the first and third defendants (hereinafter referred to as `the defendants`) applied to amend their respective defences to include a further alternative plea of justification. On 11 April 1992, the assistant registrar granted leave to amend. The plaintiffs appealed to the judge-in-chambers and the decision of the assistant registrar was reversed. This is the defendants` further appeal seeking the restoration of the order of the assistant registrar.

10 It is trite law that an amendment which would enable the real issues between the parties to be tried should be allowed subject to penalties on costs and adjournment, if necessary, unless the amendment would cause injustice or injury to the opposing party which could not be compensated for by costs or otherwise: see ***Cropper v Smith*** ;1 ***Tildesley v Harper*** .2 This is so even though the omission was caused by carelessless or the application for amendment was made very late in the day: per Brett MR in ***Clarapede & Co v Commercial Union Association*** 3 at p 263.

11 In arriving at his decision not to grant leave to amend, the learned judge was greatly influenced by a certain passage in the judgment of Lord Denning MR in ***Associated Leisure Ltd (Phonographic Equipment Co) & Ors v Associated Newspapers Ltd*** .4 This was what the learned judge stated:

> *In this respect, regard may be had to the judgment of Lord Denning MR in* ***Associated Leisure Ltd & Ors v Associated***

> ***Newspapers Ltd***. *In that case, the defendants sought leave to amend their defence to plead justification over a year after the original defence had been filed. In his judgment, the learned judge acknowledged the general guiding principles concerning leave to amend ... However, he went on to point out (at p 456G) that `when the defendant seeks to plead justification at a late stage, his conduct will be closely enquired into. The court will expect him to have shown due diligence in making his enquiries and investigations. The court may well refuse him (sic) application if he has been guilty of delay or not made proper enquiries earlier.`*

12 Before the learned judge, counsel for the defendants sought to explain their late application to amend on the ground that the House of Lords` decision in ***Telnikoff v Matuserit ch*** made it necessary for them to do so. However, the learned judge was not persuaded that there was anything in ***Telnikoff*** which affected the defendants` position; he felt that ***Telnikoff*** merely clarified the position in law as regards the distinction between fact and comment. In his opinion, right from the start, the defendants could have pleaded justification as the offending letter contains one clear statement of fact, viz:

> *... there is a prima facie case of rank amateurism or carelessness at OCBC* ***to have allowed such a breach of confidentiality to happen.*** *[Emphasis of the learned judge.]*

13 **Is there a different rule for libel action?**

14 On the principles established in ***Cropper v Smith*** , ***Tildesley v Harper*** and ***Clarapede v Commercial Union Association*** , it seems to us that, whatever may be the reason why the plea of justification was not included in the defence in the first place, and even assuming that it was due to an oversight or negligence or error of judgment, that should not preclude the defendants from pleading it now, when the trial of the action itself was still seven months away and where no prejudice was alleged. We ought also to mention that, at that time, the judgment in the defendants` appeal on the two interlocutory matters were still

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being reserved and it was delivered later on 1 August 1992. Is there, therefore, a different rule governing amendment where, in a libel action, justification is to be pleaded for the first time? The learned judge, following the dicta of Lord Denning in ***Associated Leisure*** , seemed to think so. He felt that the plea of justification should have been obvious from the very start and, after a lapse of almost four years, he was not inclined to grant leave. We note he did not find that if leave were granted, hardship or prejudice would be occasioned to the plaintiffs.

15 The issue in the present appeal boils down to this: whether in defamation actions, delay, unaccompanied by any resulting hardship or prejudice to a plaintiff, can be a sufficient ground in itself for refusing leave to amend pleadings.

16 It is necessary that we first examine the case of ***Associated Leisure*** .4 There the writ for libel was filed on 6 December 1968 in respect of an offending article that appeared in ***The Daily Mail*** the day before - `Mafia takeover bid` for `one of our big entertainment companies`. The statement of claim was filed on 17 December 1968. Defence was filed on 14 January 1969 denying that the words referred to the plaintiffs or that they were defamatory. The case was set down for hearing. Trial before a jury was to be held in June 1970. In March 1970, the defendants applied for leave to amend their defence to insert an additional plea of justification, that the words were true in substance and in fact, and, further or alternatively, that they were fair comment on a matter of public interest. Both the master and the judge refused the defendants leave to amend because they felt it was late. On appeal, the Court of Appeal granted the defendants leave to amend. Lord Denning MR first stated the uncontroversial principle to be applied, as follows (at p 455):

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> *I start with the principle, well-settled, that an amendment ought to be allowed, even if it comes late, if it is necessary to do justice between the parties, so long as any hardship done thereby can be compensated in money. That principle applies here. I think that justice requires that the matters alleged in this amendment should be investigated in a court of law ... I think it can so be compensated. The defendants, in putting this plea of justification on the record, run a very grave risk. If it fails, the damages, which might otherwise have been modest, would now be colossal.*

17 Towards the end of his judgment, after stating that a plea of justification should not be made unless there was clear and sufficient evidence to support it, Lord Denning went on to make that statement which the learned judge below relied:

> *But when the defendant seeks to plead justification at a late stage, his conduct will be closely inquired into. The court will expect him to have shown due diligence in making his inquiries and investigations. The court may well refuse him application if he has been guilty of delay or not made proper inquiries earlier.*

18 However, on the facts of that case, Lord Denning found that, as the defendants had exercised all due diligence in their inquiries and had put in the plea as soon as it could properly be done, he granted them leave to amend.

19 It does not seem entirely clear to us what Lord Denning was trying to convey in that passage. Does it mean that if the defendants could not explain the delay, leave must be refused, although there was still considerable time left before the commencement of the hearing? Does it also mean that, where an amendment was proposed late because of an error of judgment, leave must also be refused? But he did say `the court may well refuse his application.` He was really making a tentative statement. Looking at the passage as a whole and in context, we do not think Lord Denning intended to lay down a separate rule where an amendment involves a plea of justification. After all, he had just earlier referred to the principles established in ***Clarapede v Commercial Union***

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Association 3 and ***Cropper v Smith*** .1 Perhaps he was responding to counsel`s submission, based on ***Roth v Odhams Press Ltd*** ,6 that a plea of justification had to be made known at the outset, even in the absence of sufficient evidence, and the defendants would have to apply for an extension of time to file particulars thereof, which all three members of the quorum rejected. We think what he intended to convey was no more than that the conduct of the defendant was a factor in the overall consideration.

20 We find support for this perception from the speech of the second member of the quorum, Edmund Davies LJ, who, having adopted that often cited passage of Bowen LJ in ***Cropper v Smith*** ,1 went on to say (at p 457):

> *To that approach, all other considerations must be subordinate. Applying it here, the machinery of the law having been set in motion by the institution of these proceedings, the issues involved are of great importance to the community, and it is in the public interest that they should be properly ventilated notwithstanding the delay which will in consequence arise in bringing the matter to trial.*

21 The third member of the quorum, Megaw LJ, merely agreed that the appeal should be allowed. He concurred with the order proposed to be made by the Master of the Roll.

22 The passage of Lord Denning MR in ***Associated Leisure*** 4 came up for consideration by a differently constituted Court of Appeal in the later case ***Atkinson v Fitzwalter & Ors*** .7 In ***Atkinson*** ,7 the writ for libel on account of a television programme was served on 9 August 1984. A defence in the form of a single denial was served on 16 October 1984. The defendants also began inquiries whether a plea of justification could be supported. By 14 January 1985, the action was set down for trial. By 11 September 1985, an amended defence pleading justification was ready but the defendants` solicitors, mistakenly

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believing that the action had become dormant, took no steps to put that in until April 1986, when the defendants successfully applied to the judge for leave to put in an amended defence to plead justification. The plaintiffs appealed to the Court of Appeal, which again affirmed the principles enunciated in ***Cropper v Smith*** .1 However, the court allowed the appeal of the plaintiffs because so many of the particulars in the plea of justification did not support the allegation of fraud and struck out the proposed amendment, but without prejudice to the defendants` right to make a further application for leave to amend.

23 One of the points taken by the plaintiffs on the appeal in ***Atkinson v Fitzwalter*** 7 was that the amendment was made at a very late stage and the said passage of Lord Denning MR was relied upon. Another point was that, as the plea of justification in truth raised an allegation of fraud, and, following general principles, an amendment to allege fraud should not be allowed where this had not been pleaded in the first place. May LJ, who gave the leading judgment, made these remarks (at p 487) in relation to the point on delay:

> *As to the first issue argued on this appeal, I am quite satisfied, as was the judge below, that there was good reason for the defendants not to seek leave to amend their defence until, at least, September 1985. I also respectfully agree with the judge that though, thereafter, the defendants` solicitor blundered, that blunder was neither fraudulent nor intended to overreach in the sense referred to by Bowen LJ in the passage from his judgment in* ***Cropper v Smith*** *[1884] 26 Ch D 700 at pp 710-711, which I have already quoted. Further, it seems quite clear to me that to allow the amendment in this case would not cause any prejudice to the plaintiff which could not be compensated in money. Even though some of the allegations in the particulars of justification relate to events some considerable time ago, it seems that, at least, adequate records are available and I have no doubt that, in the instant case, a substantial failure to make good the allegations contained in the intended plea of justification would rebound heavily against the defendants in so far as any award of damages by the jury was concerned.*

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24 It is equally interesting to note that May LJ, having reviewed all the relevant cases, came to the conclusion that he could not see any logical reason why `just because an amendment seeks to raise an allegation of fraud for the first time, this should, in most cases, take the case outside the general principle that all amendments should be allowed so as to ensure that the real matters in controversy are before the court, provided that can be done without prejudice to the other side.` But he did add this qualification (at p 490):

> *On the other hand, it must be remembered that fraud is a very serious allegation to make against a person, as, for instance would be an allegation of criminal offence, and may, if not raised at the outset, be difficult, if not impossible, properly to investigate at a later stage in the proceedings. Further, the more serious the allegation that is made, then the more clearly satisfied must a court be that, indeed, no prejudice is being caused which cannot be compensated for in some satisfactory way or another before allowing the amendment.*

25 What is important is that, in the view of May LJ, the clear ratio behind the decision in ***Associated Leisure*** was that `justice did require that the matters raised in the original publication, in the ensuing writ and the statement of claim and in the amended defence should be investigated in a court of law.`

26 The second member of the quorum in ***Atkinson v Fitzwalter*** ,7 Parker LJ, also did not, having cited that passage of Lord Denning MR, say that he agreed with it. He reaffirmed (at p 494) the general principle that amendments, however late, should be allowed if justice required it, provided that the other side can be compensated in monetary terms.

27 The third member, Stocker LJ, having reviewed the authorities, did not think that there was any general rule that allegation of fraud must be pleaded at the outset and cannot be added by amendment. More significantly he said (at p 499) that `save in so far as RSC O 82 contains special provisions for defamation

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action, in my view, defamation actions do not differ from any other so far as the rules of pleadings are concerned, and are subject to the same restraints imposed by the rules.`

28 All we wish to say is that, if Lord Denning MR had intended (which we do not think so) by that passage to suggest that amending a defence to include a plea of justification was a special situation to which the rule established in ***Cropper v Smith*** 1 and other similar cases was in some way modified, then we are not with him. Indeed, Mr Gray has not suggested that amendments in a libel action should be treated differently from other actions. It is clear that O 20 r 5 of the Rules of the Supreme Court 1990 gives a wide discretion to the court to grant leave to amend. In our opinion, at the end of the day, the most important question which the court must ask itself is, are the ends of justice served by allowing the proposed amendment. Pleadings should not be used as a means to punish a party for his errors or the errors of his solicitors. All relevant issues should be investigated, provided the other party will not be prejudiced in a way which cannot be compensated by costs. All relevant circumstances should be considered by the court before it exercises its discretion whether it would allow an amendment. While the time at which an amendment is made is a relevant consideration it is not necessarily decisive. Delay per se does not equal prejudice or injustice. We do not think any rigid rule should or can be laid down on this.

29 The amendments in the present case were proposed to be made some seven months before the commencement of the trial. As Lord Griffith said in ***Ketteman v Hansel Properties Ltd*** ,8 `to allow an amendment before the trial begins is quite different from allowing it at the end of the trial to give an apparently unsuccessful defendant an opportunity to renew the fight on an entirely different defence.` In ***Ketteman*** ,8 the defence of limitation was not raised until the closing stages of trial, and the House of Lords, by a majority of

3-2, held that leave to amend to include that defence should not be allowed. Lord Griffith said that (at p 219) `if a defendant decides not to plead a limitation defence and to fight the case on the merits, he should not be permitted to fall back upon a plea of limitation as a second line of defence at the end of the trial when it is apparent that he is likely to lose on the merits.`

30 In our judgment, there is really only one set of rules which apply to amendment of pleadings, whatever be the cause or matter. They were summarized by Lord Brandon in ***Ketteman v Hansel Properties*** 8 which we would respectfully adopt (at p 212):

> *The effect of these authorities can, I think, be summarized in the following four propositions. Firstly, all such amendments should be made as are necessary to enable the real questions in controversy between the parties to be decided. Secondly, amendments should not be refused solely because they have been made necessary by the honest fault or mistake of the party applying for leave to make them: it is not the function of the court to punish parties for mistakes which they have made in the conduct of their cases by deciding otherwise than in accordance with their rights. Thirdly, however blameworthy (short of bad faith) may have been a party`s failure to plead the subject matter of a proposed amendment earlier, and however late the application for leave to make such amendment may have been, the application should, in general, be allowed, provided that allowing it will not prejudice the other party. Fourthly, there is no injustice to the other party if he can be compensated by appropriate orders as to costs.*

31 We find support in what we hold herein in an unreported decision of the English Court of Appeal in ***Carmen Proetta v Times Newspapers Ltd*** , where an amendment was made ten days before trial to introduce a restricted defence of justification. The judge allowed the amendment which decision was upheld on appeal. Taylor LJ said:

> *If, through lack of earlier insight or a change of mind, a defendant realizes, albeit at a late stage, that the pleadings do not set out his real case, there must be some measure of injustice should he not be allowed to plead and argue it. The extent of the injustice*

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> *and how it compares with the injustice to the plaintiff of allowing a late amendment is a matter for the judge`s discretion.*

32 **Relevance of Telnikoff v Matusevitch5**

33 In the court below, the defendants submitted that the introduction of a plea of justification in the instant case was rendered necessary because of the recent decision of the House of Lords in ***Telnikoff v Matusevitch*** . There, the plaintiff sued for libel in respect of a letter written by the defendant and published in a newspaper which was in response to an article written earlier by the plaintiff and published in that newspaper. The defendant did not seek to justify the words complained of but pleaded fair comment on a matter of public interest, to which the plaintiff alleged express malice. At the end of the plaintiff`s case, the trial judge accepted the defendant`s submission that there was no case to go to the jury because (i) any reasonable jury properly directed would be bound to uphold the defence of fair comment and (ii) there was no evidence of express malice. He held that the letter contained pure comments and dismissed the plaintiff`s claim. The Court of Appeal dismissed the plaintiff`s appeal. The House of Lords held that, in deciding whether the offending letter contained pure comments, you should look only at the letter and not the article in respect of which the letter was written in response. Lord Keith explained (at p 392):

> *The readers of the letter must have included a substantial number of persons who had not read the article or who, if they had read it, did not have its terms fully in mind. If to such persons the letter appeared in paras 6 and 7 to contain statements of fact about what the plaintiff had written in his article, which, as I have already indicated, might well be the case, then, in the eyes of those persons, the plaintiff would clearly be defamed.*

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34 The House of Lords decided (with Lord Ackner dissenting) that the trial judge was wrong in failing to leave to the jury the question whether parts of the defendant`s letter contained statements of fact.

35 We must, however, hasten to add that the dissenting views of Lord Ackner are not without some merits. He reasoned (at p 361):

> *...if the court is not entitled to look at the material on which it is alleged that the words complained of were commenting, it would unduly restrict the defence of fair comment. Indeed, it would diminish and impair this vitally important right, by whittling it down by a wholly unjustified legal refinement. If the criticism of an article published in a newspaper on a subject matter of public importance is to be confined to passages actually set out in the criticism, then the freedom to comment on a matter of public importance becomes, from a practical point of view, illusory or non-existent. The ability of a defendant to comment should not depend on whether or not the reader is aware of the material which is the subject of the comment ...*

36 In my judgment, the defence of fair comment is not based on the proposition that every person who reads a criticism should be in a position to judge for himself. It would be absurd to suggest that a critic may not say what he thinks of a play performed only once, because the public cannot go and see it to judge for themselves. The defence of fair comment is available to a defendant who has done no more than express his honest opinion on publications put before the public. It is sufficient for him to have identified the publication on which he is commenting, without having set out such extracts therefrom as would enable his readers to judge for themselves whether they agreed with his opinion or not. Were the law otherwise, it would be necessary or at the very least forensically expedient to set out, ipsissima verba, the entire contents of the article upon which as a matter of public importance the citizen is entitled to comment honestly.

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37 We do not think this division of views need detain us. Neither is it necessary for us to take a position as to which of the two approaches is more persuasive. What the defendants submitted is that, in view of the majority decision, they realized that a trial judge might well find that, reading the first defendant`s letter of 28 November 1987 on its own, it contained, in part at least, a defamatory allegation of fact. Thus, the need to add a plea of justification. If not for the majority ruling in ***Telnikoff*** , they would be quite happy to rest their case on the defence of fair comment.

38 As we have stated above, the learned judge felt that, while the decision in ***Telnikoff*** 5 `clarified the position in the law as regards the distinction between fact and comment nothing in this said decision affected the defendants` position.` The learned judge held that a plea of justification should have been obvious to the defendants from day one as this offending letter contained at least one clear allegation of fact:

> *there is a prima facie case of rank amateurism or carelessness at OCBC* ***to have allowed such a breach of confidentiality to happen.****[Emphasis of the learned judge.]*

39 But what the defendants contend is that the phrase above which is emphasized, should be read in the context of the facts and matters set out in the earlier article in the ***Business Times*** ; the first defendant was only drawing an inference from those facts. They argued that an inference of fact may also be a comment: ***Gatley on Libel and Slander*** (8th Ed) paras 697 and 706.

40 In our view, the majority decision in ***Telnikoff*** 5 could be said to have affected the present case in this way, namely, to determine whether the letter of 28 November 1987 contained only comments or did it also contain facts, reference to the ***Business Times*** article of 17 November 1987 would no longer be permissible. This would appear to be the first time that this very point has

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been decided specifically by the courts. This would certainly restrict the defence of fair comment. It is not always easy to say whether a statement is an expression of opinion or a statement of fact. The same words may be one or the other according to their context.

41 As we understand it, what the defendants are saying is that, following the compartmentalized approach in ***Telnikoff*** ,5 since, in determining the question of fair comment, the court can only look at the offending letter itself, and not the earlier article, it would mean that if the letter did, when so narrowly viewed, contain some statement of fact, the defendants could fail in their plea of fair comment, and thus of the action, if no plea of justification was included.

42 It is true that the defendants could have raised the defence of justification very much earlier but appear, until very recently, to have taken a decision to `nail their colours to the mast of the plea of fair comment,` in the words of counsel for the plaintiffs.

43 Nevertheless, as we see it, the reference to ***Telnikoff*** 5 was made for the purpose of explaining why the plea of justification was not made earlier. While the learned judge felt that the particular sentence was clearly a statement of fact and the plea of justification should have been made earlier, it seems to us that it could also be viewed (and we put it no higher than `could` as that will be a matter for the trial judge to decide), when read with the earlier article, as an inference of fact; thus a comment. Accordingly, it is understandable why ***Telnikoff*** 5 is causing some concern to the defendants and why they want to plead justification now. In any case, even if we assume that this latter view is untenable, should the defendants therefore be disallowed to correct their misimpression or mistake? The learned judge seemed to have rested his decision entirely on that passage of Lord Denning. Counsel for the respondent has urged

us to bear in mind the history of the litigation, the long delay between the filing of the original defence and the proposed amended defence and all the interlocutory applications that had, in the meantime, been made. It is true that the trial of this action could not be set earlier because of the interlocutory applications and the appeal therefrom. But it is the undoubted right of a party to pursue interlocutory reliefs in order to advance his case. No evidence of bad faith is shown.

44 It has not been shown that allowing the proposed amendment would have caused a delay to the trial which was then fixed for hearing in September 1992. No new facts have been pleaded in support of the plea of justification. The defendants have given an undertaking that they will not seek any further discovery other than those which were then the subject of the appeal before the Court of Appeal and which that court might deem fit to order. There is no question of limitation. Most importantly no prejudice which cannot be compensated by costs has been shown. Counsel for the plaintiffs made a rather bald assertion that, as the new case is so woolly, it `creates difficulties for OCBC in repudiating it so long after the event.` No particulars whatsoever were given in the plaintiffs` affidavits what those difficulties are.

45 **Matter of discretion**

46 We appreciate that the question whether an amendment should be allowed is a matter of discretion of the judge hearing the application, who would no doubt exercise it to achieve the ends of justice. The principles upon which an appellate court can properly interfere with the exercise of a trial judge`s discretion are set out in the well known passage of Lord Diplock`s judgment in ***Hadmor Productions Ltd & Ors v Hamilton & Anor*** at p 220, and we do not propose to set them all out. Suffice it to say that an appellate tribunal should not

interfere just because its members would have exercised the discretion differently; it must be satisfied that the judge below had exercised the discretion wrongly.

47 It seems to us that the learned judge in the instant case had erred in exercising his discretion when, in reliance on the passage of Lord Denning MR, he treated delay as being decisive to the question. It is but one factor to be placed on the scale. He did not appear to have given consideration to the other equally, if not more, important factors. In our view, justice clearly demands that the proposed amendment should be allowed so that all relevant issues will be fully canvassed at the trial. The plaintiffs are a large banking corporation and the consideration based on the strain of litigation on personal litigants which Lord Griffith referred to in ***Ketteman*** 8 (at p 220) can have no application. Besides, the trial here has not even commenced.

48 **Respondents` notice: are the particulars furnished adequate?**

49 We now turn to consider the grounds raised in the plaintiffs`/respondents` notice in support of the learned judge`s decision. The plaintiffs say that the particulars given in substantiation of the plea of justification did not go to the sting of the alleged libel, namely, that the plaintiffs had been guilty of a breach of confidentiality. Justification should be pleaded with the precision of an indictment. Two cases were cited: ***Zierenberg and wife v Labouchere*** and ***Prager v Times Newspapers Ltd*** . Furthermore, the plaintiffs aver that the plea is grounded entirely on inference with no supporting particulars whatsoever.

50 In ***Zierenberg*** ,11 a number of statements made by the defendant were alleged to be libellous. The defendant, without any particularization, pleaded

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generally to the whole a justification that it was true. The plaintiffs asked for particulars, some of which were furnished and some were not. Esher MR, in the course of his speech, cited an earlier case where this remark was made: `the plea ought to state the charge with the same precision as in an indiction.` But it is important to bear in mind what the case was all about in ***Zierenberg*** 11 and we can do no better than quote Esher MR (at p 187):

> *The libel is in effect that the plaintiffs are `charity swindlers and impostors and the home is a monstrous swindle.` That is a general statement, and he is asked for particulars, that is, for the instances on which he relies to justify that statement, and he says: `The instances are that they appropriated for their own purposes moneys received for, or earned by, the home, and they caused statements to appear in the annual balance-sheets of the home of cash supplies by the female plaintiff, and loans made by the male plaintiff, which were not, in fact, supplied or lent out of their own moneys, but in reality out of the moneys of the home.` Is that answer sufficient? No doubt it states the way in which the defendant means to justify; but it is almost as general as the statement in the alleged libel.*

51 The issues in ***Prager v Times Newspaper Ltd*** were somewhat more involved. However, the court there reaffirmed the rule that a plea of justification had to be pleaded with sufficient particularity to enable the plaintiff to know precisely what case he had to meet.

52 It seems to us that what particulars are required for a plea of justification would have to depend on the facts and circumstances of the case. It is neither wise nor desirable to generalize, other than to say a defendant ought to give sufficient particulars so that the plaintiff will know the case he has to meet.

53 It is true that the defendants here have relied upon substantially the same facts as those used for fair comment to support the plea of justification. We are unable to see how that is improper. The only question is whether the particulars as stated are capable of proving the allegation that the plaintiffs had been guilty

of a breach of confidentiality. The defendants are relying on those particulars to ask the court to make certain inferences. In para 6(6) of the proposed re-amended defence, they have set out the particulars upon which they would ask the court to draw the necessary inferences:

> *The information ... disclosed in the said article, in view of its nature and detail concerning the internal affairs of the plaintiffs, must have emanated from someone who was, or recently been, working at or employed by the plaintiffs, or who had access to and knowledge of the internal affairs of the plaintiffs.*

54 Unless it can be clearly shown that the plea of justification is unsustainable, namely, that no court could, under any circumstances, make any such inference, the pleading should be allowed to remain. The principles to be applied must be similar to those for striking out pleadings under O 18 r 19. Whether those inferences should, or should not, be made will be a matter which the trial judge will eventually have to decide, taking into account all the circumstances of the case. We do not think it would be appropriate for us at this stage to say anything more.

55 Accordingly, we are unable to accept the submission of counsel for the plaintiffs that the defendants have not set out sufficient particulars to the plea of justification. In our view, the plaintiffs here can be in no doubt as to the case, in so far as the plea of justification is concerned, that they have to meet.

56 We would further observe that the justification which the defendants have pleaded is of a somewhat restricted nature. This is apparent from the new para 8 of the proposed re-amended defence:

> *... if, and in so far as, the words complained of meant, or were understood to mean, in their natural and ordinary meaning, that disclosure of the names of the four bankers in* ***Business Times*** *on 17 November 1987 was a disclosure of matters which were, or should have been, kept confidential, and was potentially*

> *damaging and embarrassing to the named bankers, and there were reasonable grounds for believing or concluding that such disclosure was the result of ineptitude or carelessness by someone at the plaintiffs` bank for which the plaintiffs were ultimately responsible, the said words are true in substance and in fact.*

57 It is open to a defendant to plead so as to justify any reasonable meaning of words published which a jury, properly directed, or a court, where there is no jury, might find to be the real meaning. The scope of the defence of justification should not depend upon the way in which the plaintiff pleads his case, but on the meanings which the words published are capable of bearing: per Purchas LJ in ***Prager v Times Newspapers Ltd*** at p 86. In our view, the defendants are entitled to give to the allegedly offending words the meaning which they say the words bear and to justify them.

58 In the premises, this appeal is allowed. The order of the learned judge is set aside and the order of the assistant registrar is accordingly restored. The plaintiffs shall bear the costs of this appeal and of the appeal from the assistant registrar to the judge-in-chambers. The security for costs shall be refunded to the defendants.

59 ***Appeal allowed.***

Chao Hick Tin J
Karthigesu JA

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Wright Norman and Another v Oversea-Chinese Banking Corp Ltd [1993] SGCA 89

Sivakumar (Arthur Loke & Pnrs) for the appellants
Charles Gray QC and Kevin Tan (Shook Lin & Bok) for the respondents

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