IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 46

Suit No 1104 of 1996 (RA No 7 of 1998)

Between

Rohde & Liesenfeld Pte Ltd

… Plaintiff

And

Jorg Geselle
Chia Poh Eng
Hanseatic Logistics Pte Ltd
Ee Gat Choo

… Defendant

GROUNDS OF DECISION

Version No 1: 20 Nov 2026 (00:35 hrs)

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Rohde & Liesenfeld Pte Ltd v Jorg Geselle and Others

[1998] SGHC 46

Suit No 1104 of 1996 (RA No 7 of 1998)
Choo Han Teck JC
19 February 1998

Judgment:

GROUNDS OF DECISION

1. The Plaintiffs are carrying on business in Singapore as, inter alia, forwarders and packers. In 1990 they employed the 1st Defendant as their managing director and in 1992 they employed the 2nd Defendant as a manager. The 4th Defendant was employed in 1990 as the private secretary to the 1st Defendant. The 3rd Defendant is a company incorporated in Singapore. The Plaintiffs allege that the 1st Defendant "procured" the incorporation of the 3rd Defendants "with the object of enticing away customers of the Plaintiffs to transfer their custom to the 3rd Defendants".

2. In paragraphs 26(a), (b), (c), (e), (h) and 27 of the 2nd Re-Amended Statement of Claim the Plaintiffs allege that the 1st, 2nd and 4th Defendants were in breach of their contractual duties of fidelity in incurring improper or unauthorised expenses on the Plaintiff's account, and that the 1st Defendant failed to take proper or reasonable steps in the performance of his daily duties. For these reasons, inter alia, the Plaintiffs are claiming damages.

3. By an order of court made on 11 November 1997, the suit for was fixed for trial from 5 to 13 February 1998. On 24 December 1997, the Plaintiffs took out an application for further directions praying, inter alia, that the Plaintiffs be given leave to withdraw their claim in paragraphs 26(a), (b), (c), (e), (h) and 27.

4. The only reason offered by the Plaintiffs' counsel for this application was that pursuant to discovery, they had been studying certain documents with the view of joining some sub-contractors of the Plaintiffs as defendants in this suit. No further details were offered.

5. Their application was allowed by the assistant registrar on 5 January 1998 with the condition that the Plaintiffs are not to institute proceedings again on the claims withdrawn. The Plaintiffs appealed before me to rescind the condition imposed by the assistant registrar.

6. The Plaintiffs' suit was commenced in June 1996. The trial dates have been fixed but till date the Plaintiffs were still unsure whether they have a claim against the sub-contractors whom they suspect of colluding with the Defendants. The collusion or conspiracy of the sub-contractors and Defendants cannot have been a notion that was not contemplated earlier. It appears to me that the Plaintiffs must have considered this point, but did not pursue it for lack of evidence. The Plaintiffs have yet to identify what new evidence they now have which would make a case for them. Indeed, their application was made on the premise that they would sue the sub-contractors if they have the evidence, and not that they already have the evidence but require time to put them together.

7. The Plaintiffs informed the Defendants' solicitors by letter dated 3 December 1997 that they would not be proceeding with their claim in paragraphs 26 and

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27 of the Statement of Claim. The letter stated that these issues could be separated from the other issues at trial.

8. The Plaintiffs' application was heard by the assistant registrar on 5 January 1998, a month before the trial. Counsel for the Plaintiffs submitted that there would be no prejudice to the Defendants who could easily be compensated by costs. This submission did not impress the learned assistant registrar, and it made no headway with me. This was not a case where a party was seeking to withdraw an entire action so that he could recommence a fresh one. There are often good grounds for such a course. If the action is not time barred, and in the absence of any specific prejudice to the other party, the court may allow a withdrawal with no conditions attached.

9. However, in this case, the Plaintiffs sought to withdraw part of their claim while proceeding with the rest. A fresh action on the withdrawn claims in this case would necessarily require a review of the same background evidence. It would certainly incur further costs even though evidence of the first trial might be ordered to be used in subsequent proceedings. The Defendants would certainly have to refresh their solicitors and I do not think that they ought to be put to this expense of costs and time unless there are good grounds for it. The Plaintiffs' application was made on the basis of a "maybe", and is certainly unsupportable. In the circumstances, I think that the learned assistant registrar exercised her discretion rightly in imposing the condition that no further claims should be made once those paragraphs have been withdrawn.

10. To have a fresh action subsequently is to put the Defendants through a trial all over again, when the issues could have been resolved in one. In this case, the Plaintiffs have not even formulated a claim against the alleged sub-contractors. They have not indicated any specific basis upon which the sub-contractors could

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be made Defendants, or even why it was that they could not as yet formulate their claim against them. They have also failed to respond to orders for further and better particulars and would have to face the consequences at trial for that omission. They should not be allowed to slip away by having the trial on those issues postponed. I have also considered the Plaintiffs' oral application before me that they be allowed to withdraw their application if their appeal before me was not allowed. Normally, that would have been a reasonable order if the applicant was not prepared to accept the court's conditions. However, in this case I think that it was far too late for this "fall-back" order. This request should have been made to the learned assistant registrar, but was not. By the time the appeal came before me it was far too close to the trial. There were no references in the Plaintiffs' affidavit of evidence-in-chief to the claims sought to be withdrawn. Counsel for the Defendants submitted, therefore, that on those issues the Plaintiffs were doomed to fail at trial. It was thus remarkable for Mr Ng to suggest on behalf of the Plaintiffs that they could ask for leave to include that evidence during the trial itself. If the evidence is available now it ought to have been in the affidavits. I do not think that the Plaintiffs ought to be granted the advantage of an unmeritorious flexibility in the circumstances. As the trial was just a fortnight away, I did not disturb the orders of the learned assistant registrar. The appeal was, therefore, dismissed.

- Sgd -

CHOO HAN TECK

Judicial Commissioner

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Choo Han Teck JC

Ian Ng Fook Yun [Cooma, Lau & Loh] for the plaintiffs/appellants
R Chandran [Murugesan & Associates] for the defendants/respondents

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