Checkpoint Fluidic Systems International Ltd v Marine Hub Pte Ltd and Another Appeal [2009] SGHC 134

Case Number : DA 21/2008, 22/2008

Decision Date : 03 June 2009

Tribunal/Court : High Court

Coram : Chao Hick Tin JA

Counsel Name(s) : Andrew Goh (Patrick Tan & Associates) for the appellant; Thomas Tan and Shabnam Arashan (Haridass Ho & Partners) for the respondent

Parties : Checkpoint Fluidic Systems International Ltd — Marine Hub Pte Ltd

Agency

Civil Procedure

3 June 2009 Judgment reserved.

Chao Hick Tin JA:

Introduction

1 This is an appeal against the decision of the district judge ("the DJ") in District Court Suit No 21 of 2006 and Summons No 5169 of 2008. The DJ in *Northern Laboratories Pte Ltd v Marine Hub Pte Ltd v Checkpoint Fluidic Systems International Ltd* [2008] SGDC 256 ("the GD") had found the appellant, Checkpoint Fluidic Systems International Ltd, liable to indemnify the respondent, Marine Hub Pte Ltd, for liabilities incurred under a contract between the respondent, and Northern Laboratories Pte Ltd ("Northern Labs") for the hiring of certain pressure testing equipment.

The Facts

2 The respondent is in the business of selling and manufacturing marine and marine related hardware and products. The appellant is in the business of manufacturing and selling chemical injection pumps for use in the oil and gas industry. The respondent was, at the material time, the appellant's exclusive agent responsible for selling and marketing the appellant's products for the oil and gas industry. This relationship commenced on 2 October 2004. Under this agency arrangement, the respondent would receive a 10% commission on sales to the appellant's existing clients and additionally, profits from marking-up product prices for clients developed by the respondent. The appellant's Asia Pacific manager and representative, Steve Pratt ("Pratt"), works out of an office space which it has rented in the respondent's premises.

3 On 4 February 2005, Pratt suggested a plan to the respondent's managing director, Eddie Ewe Soon Ee ("Ewe"), for the respondent to lease certain pressure testing equipment from Northern Labs, and, in turn to rent it out to Advance Marine Services Sdn Bhd ("AMS") at a 20% mark-up in price. Ewe agreed. It is not disputed that this transaction fell outside the scope of the existing agency agreement between the parties. Pratt issued a purchase order (Purchase Order no. MH 014730) on the same day using the stationery of the respondent and where Pratt signed at two spaces "Issued by" and "Requested by". The purchase order did not bear the respondents' signed approval. The equipment was leased the very next day, on 5 February 2005. Pratt directed Northern Labs to deliver the equipment to HL Engineering in Lumut, Malaysia where AMS was conducting pressure testing.

Eventually, on 2 March 2005, only one piece of the equipment was returned by Pratt to Northern Labs.

4 Northern Labs brought an action, DC Suit No 21 of 2006N ("the suit"), against the respondent for the outstanding rent owed and for the cost of replacing the unreturned parts of the equipment. The respondent in turn initiated third party proceedings against the appellant seeking to be indemnified for its liabilities to Northern Labs. The suit was settled between the respondent and Northern Labs on 2 February 2007, the first day of trial. The respondent agreed to pay Northern Labs $66,228.75, being the outstanding rent up to 31 December 2005, $11,299 for replacement of the equipment, $3,973 for interest at 6% per annum for a year and costs agreed at $15,000. In return, Northern Labs agreed to assist the respondent in recovering the settlement sum from the appellant.

5 Through the third party proceedings, the respondent sought to recover the abovementioned sums from the appellant. In addition, the respondent also amended its statement of claim by way of Summons No 5169 of 2008 so as to include in its claim the sum of $24,239.25 which it had earlier paid Northern Labs for chart paper and for the rental of the equipment from 4 February to 30 April 2005.

6 The central issue in the third party action is whether the respondent entered into the lease agreement with Northern Labs in its own right or as agent for the appellant. The parties have given conflicting accounts of the events which led to the institution of the suit by Northern Labs. I will now set these out briefly.

The appellant's account

7 Pratt testified that he was introduced to one Gordon Fraser ("Fraser") of AMS by a friend where he learnt that AMS required pressure testing equipment. Pratt offered to help Fraser source for a supplier. Pratt decided to introduce this business opportunity to Ewe because Ewe had been kind to him and had taken care of him since his arrival in Singapore. Pratt then discussed the plan with Ewe and the respondent's senior manager at the time, William Ho ("Ho"). Ewe and Ho agreed to the plan and asked Pratt to deal with Northern Labs and AMS. While Pratt proposed the mark-up in price, the final figure was decided by Ewe. On 4 February 2005, Pratt issued a purchase order (referred to above at [3]), using the stationery of the respondent, to Northern Labs and directed that the equipment be delivered to HL Engineering where AMS was doing pressure testing. That, according to Pratt, was the last of his involvement.

8 However, in a supplemental affidavit, Pratt added that the respondent's driver, Jamaluddin Bin Bujang ("Jamaluddin"), had informed him that one piece of the equipment was returned to the respondent. Pratt then discussed the matter with Ho and they assumed that it was returned by AMS. Pratt offered to bring that piece of equipment to Northern Labs because his former superior from Scotech International Services Ltd, Northern Labs' principal, was in town and Pratt intended to meet him. That was how that piece of the equipment was returned to Northern Labs on 2 March 2005.

9 Pratt maintained that his role in the transaction was entirely for the respondent's benefit and not the appellant's. In particular, he pointed out that he was actually trying to do Ewe a favour. He relied on the fact that at no time did the respondent back-charge the appellant for the payment the respondent had made to Northern Labs and that this was proof that the lease arrangement with Northern Labs was on the respondent's own account.

The respondent's version

10 Ewe testified that on 4 February 2005, Pratt came to see him to discuss the aforementioned

plan and Pratt had proposed the mark-up in price. Ho denied being present at this discussion between Ewe and Pratt. On cross-examination, Ewe stated that they agreed that the respondent would receive 10% commission as an administrative fee and in return, the respondent would allow Pratt to use its facilities, including stationery, to do the paperwork for the transaction. As for the events surrounding the return of the equipment to Northern Labs, both Jamaluddin and Ho denied having spoken to Pratt about it.

11 With regard to the failure to back-charge the appellant in respect of payments made to Northern Labs, the respondent's advisory board executive, Ong Geok Quee, testified that the respondent paid Northern Labs without back-charging the appellant by mistake because the accounts department thought that the appellant had already been back-charged. After discovering this, Ong said that she intended to back-charge the appellant all payments made to Northern Labs but chose not to do so because it appeared that the case was going to proceed to court.

12 In the totality, the respondent's position was that it had only facilitated the transaction and that the transaction was entered into for the account of the appellant and not the respondent. In support, the respondent also pointed to two emails sent by Pratt to show that the latter had orchestrated the transaction for the appellant's benefit: first, in a 4 February 2005 email to Fraser("Email of 4 February 2005")[note: 1] to quote the rental price of the equipment, Pratt stated that the "Invoice will be from my distributor here in Singapore Marinehub"; second, in an 18 November 2005 email[note: 2] to one Ken of HL Engineering seeking assistance in locating the equipment rented to AMS, Pratt stated the following without any reference to the respondent:

> I wonder If [*sic*] you could help me identify some equipment that we Hired to a company AMS who performed some pressure testing at your premises commencing April of this year.
>
> Unfortunately the equipment has not been returned to ourselves, despite many efforts to contact AMS.
>
> ...
>
> It would be very much appreciated if you could let me know that the equipment is still there and we will make arrangements for the goods to be collected.

13 Despite the ambiguity of the term "we", the respondent's submission is that Pratt's failure to mention the respondent in either email is consistent with the fact that the transaction was entered into for the appellant's account and not for the respondent's account, notwithstanding that the respondent's letterhead was used by Pratt to effect the transaction.

The decision of the DJ

14 The DJ made the following material findings of fact:

> (1) Pratt proposed the transaction to Ewe for commercial considerations and not as a favour to the latter;
>
> (2) Ewe agreed to the transaction because the respondent would receive 10% commission being administrative charge;
>
> (3) Pratt proposed the mark-up price for the quote to AMS;

(4) Pratt conducted all negotiations with Northern Labs and AMS;

(5) Pratt prepared and signed the purchase order issued to Northern Labs; and

(6) Pratt arranged for the delivery of the equipment to AMS.

15 The DJ found, in the light of the foregoing facts, coupled with the Email of 4 February 2005, that the transaction was entered into for the benefit of the appellant and not the respondent. In coming to this finding, the DJ also preferred Ho's testimony that he had no knowledge of the piece of equipment being returned to the respondent's premises and that he had not attended the discussion between Ewe and Pratt. She also found, contrary to the assertion of Pratt, that his role went beyond that of merely facilitating the transaction. She found that he played a pivotal rule in the transaction.

16 The DJ held that on the facts, a right of indemnity in equity had arisen in favour of the respondent against the appellant for the liabilities it had incurred under the contract with Northern Labs. In coming to this conclusion, the DJ relied very much on the following passage of Lord Wrenbury in the Privy Council case of *Eastern Shipping Co v Quah Beng Kee* [1924] AC 177 ("*Eastern Shipping Co*.") at p 182 to 183:

> A right to indemnity generally arises from contract express or implied, but it is not confined to cases of contract. A right to indemnity exists where the relation between parties is such that either in law or in equity there is an obligation upon the one party to indemnify the other. There are, for instance, cases in which the state of circumstances is such that the law attaches a legal or equitable duty to indemnify arising from an assumed promise by a person to do that which, under the circumstances, he ought to do. The right to indemnify need not arise by contract; it may (to give other instances) arise by statute; it may arise upon the notion of a request made under circumstances from which the law implies that the common intention is that the party requested shall be indemnified by the party requesting him; it may arise (to use Lord Eldon's words in *Waring v Ward* (1); a case of vendor and purchaser) in cases in which the Court will "independent of contract raise upon his (the purchaser's) conscience an obligation to indemnify the vendor against the personal obligation" of the vendor.

17 The DJ found that while there was no contract between the parties, in light of the fact that the transaction was entered into by the respondent for the benefit of the appellant, a right of indemnity in equity had arisen in favour of the respondent against the appellant.

18 The DJ accordingly allowed the respondent's claim except for the replacement value of the equipment. She found that the settlement with Northern Labs in respect of the replacement value was unreasonable because, had the matter proceeded to trial, Northern Labs would only have been awarded nominal damages in that regard.

19 The appellant has appealed against the whole of the DJ's decision.

Issues raised on appeal

20 The appellant raised six arguments on appeal: first, the respondent had failed to prove that the equipment had been delivered to AMS; second, the transaction was not entered into for the benefit of the appellant; third, the cause of action for an indemnity was not properly pleaded; fourth, the terms of settlement between Northern Labs and the respondent were not reasonable; fifth, the respondent failed to mitigate its losses; and sixth, it was prejudiced by the DJ's decision to allow the late amendment to the respondent's statement of claim to include the claim for the $24,239.25 which

the respondent had paid Northern Labs.

21 From these arguments, the issues raised on appeal can be categorised under the following heads:

(a) Whether the equipment had indeed been delivered to AMS;

(b) Whether the DJ correctly found that the transaction was entered into for the account of the appellant with the result that a right of indemnity had arisen in favour of the respondent against the appellant;

(c) Whether the cause of action for an indemnity was sufficiently pleaded;

(d) Whether the loss claimed by the respondent was reasonable and in this regard, whether the respondent had mitigated its losses and had come to a reasonable settlement with Northern Labs; and

(e) Whether the DJ erred in allowing the amendment to the respondent's statement of claim to include the claim for the $24,239.25 it had paid Northern Labs.

Whether the equipment had indeed been delivered to AMS

22 This issue raised the question as to whether the respondent has proved that the equipment had been delivered to AMS. It is true that the position taken by the respondent before the settlement with Northern Labs was that the equipment had not been delivered by Northern Labs to AMS. That position taken by the respondent before is wholly irrelevant. If one were to take that line of argument, one could also say that by settling the claim the respondent realised the untenability of the position. In any case, as far as the appellant was concerned, it had not in its defence filed to the third party claim, put in issue the question whether the equipment had been delivered to AMS. Its entire defence is that Pratt entered into the leasing arrangement with Northern Labs as agent for the respondent. In para 9 of its defence, the appellant stated that "Pratt was duly authorised by the [respondent] to act as the [respondent's] agent in making arrangements for the delivery of goods from [Northern Labs] to [AMS]." It was not asserted by the appellant that the equipment was never delivered to AMS. Even in his affidavit of evidence-in-chief, all that Pratt said (at [33]) was as follows[note: 3]:

I was pulled into the picture again sometime in or about November 2005 …

This was when I eventually discovered that the equipment from the Plaintiffs had apparently gone missing or were never delivered to Lumut, Malaysia. I managed to contact Gordon Fraser on the phone once, but he hung up on me *after saying that the equipment had been returned* and that the Defendants would not be receiving any payments from AMS. Thereafter, I was not able to contact AMS or locate their whereabouts. [emphasis added]

23 It would be seen that even on Pratt's evidence it was not really asserted that the equipment was never delivered to AMS but that it had not been returned. That was the basis on which the trial proceeded. Here, I must underscore the fact that no complaint from AMS or Fraser (who needed the equipment urgently which was the reason why the whole transaction was wrapped up so quickly) was received by Pratt or by anyone at the respondent that the equipment had not arrived. On the contrary, there is the evidence that one piece of the equipment had been returned from AMS which Pratt personally handed over to Northern Labs. In fact, the DJ stated at [1] of her Grounds of

Decision ("GD") that "Pratt had also requested that the [equipment] be delivered to a site in Malaysia and the equipment [was] duly delivered". The following passage at [46] of the GD of the DJ is germane:

> There was no basis for the allegation that the equipment were not delivered to AMS. DW1 [service engineer with Northern Labs] has stated in his affidavit of evidence-in-chief that upon receipt of the purchase order from the [respondent] and after the [respondent] had signed the delivery order dated 4 February 2005, he had all the equipment ordered packed into one pallet. He engaged JL Logistics to deliver the equipment to the address stated in the purchase order and handed the pallet over to the driver. JL Logistics returned with the acknowledgment on the calibration certificate at PBD86. This portion of his evidence was not challenged in cross-examination. Although the driver did not give evidence, the return of the recorder by Steve Pratt also showed that the equipment had more likely than not, been delivered. Steve Pratt also confirmed in cross-examination that he did not receive any communication from AMS that the equipment had not been delivered. Although the acknowledgement of receipt was only on one calibration certificate, all the equipment had according to DW1, been packed and delivered in one pallet. The acknowledgement by AMS and not HL Engineering should be accepted as AMS were the hirers as far as the [respondent] were concerned.

I agree with this finding.

Whether the DJ correctly found that the transaction was entered into for the account of the appellant with the result that a right of indemnity had arisen in favour of the respondent against the appellant

24 I now turn to the second issue which is the central issue in this appeal. This concerns the DJ's finding that the transaction which the respondent entered into with Northern Labs was in fact one entered into for the account of the appellant. In coming to this conclusion, the DJ had carefully weighed the evidence adduced by both parties, and decided it on a balance of probabilities. By this finding it is clear to me that what the DJ meant was that, although the transaction was on the face of it entered into by the respondent (as its letterhead was used by Pratt to issue the purchase order) with Northern Labs, the respondent was doing so no more than as an agent of the appellant. In the light of the evidence before the DJ, this was a finding of fact which she was entitled to make.

25 I appreciate that the evidence adduced by both parties does not all point to one direction or the other, though the preponderance would appear to favour the respondent's position. The main factors in favour of the position contended for by the appellant are the following: first, the purchase order issued to Northern Labs was on the stationery of the respondent. Second, Pratt claimed that he had brought this business to the respondent as a favour to the respondent so that the respondent could make some money out of it. Third, the respondent paid up two bills from Northern Labs in relation to the lease of the equipment without immediately back-charging the amounts to the appellant. Indeed, on 16 June 2005 Pratt emailed Usha Rani of the Accounts Department of the respondent asking her not to raise any charges to the appellant in relation to the lease of the equipment. Here, I must add a counter-argument from the respondent, which is, that Pratt sent this email only after it was brought to his attention that the respondent had difficulties in getting AMS to fill up the credit application.Fourth, it may be asked why, if this transaction was the appellant's, did the respondent fail to back-charge the appellant straight away after making payment to Northern Labs in June 2005.

26 On the other hand, the following circumstances would favour the position of the respondent. First, the quotation from Northern Labs was addressed to the appellant for the attention of Pratt and

not the respondent. Second, in Pratt's email of 4 February 2005 to Fraser of AMS where he stated that the daily rate was $355 (subject to a minimum of four days), Pratt also stated that the "[i]nvoice will be from my distributor here in Singapore MarineHub". Third, the respondent is totally unfamiliar with the line of business relating[note: 4] to pressure testing equipment. But here I should pause to add that the appellant made the point that acting as the middleman was the business of the respondent and it should not matter whether the equipment is something the respondent is familiar with.Fourth, the equipment was being supplied by Pratt's previous employer to Northern Labs for the purpose of onward leasing to the respondent. Fifth, this transaction was brought to the attention of the respondent by Pratt and the respondent had no inkling who Northern Labs and AMS were. Pratt claimed that he did not know AMS or its top man there, Fraser, personally. Yet AMS contacted Pratt to source for the equipment and, in turn, Pratt contacted Northern Labs whom he knew could supply the equipment. Moreover, in his email of 4 February 2005, Pratt called Fraser by his first name "Gordon". Whatever may be the true position, Pratt certainly knew AMS and Fraser better than the respondent. The only understanding reached between Pratt and Ewe that day was that the respondent would get a commission for allowing the appellant to use the respondent's facilities to effect the transaction. Here the respondent also explained why it had allowed the appellant to use its letterhead to effect the transaction – because the appellant had then not yet been registered to carry out any business. On this last aspect, the appellant countered that the purchase order could be issued from its head office in USA. In response, the respondent argued that the appellant had to use its letterhead at the time because this was a transaction that had to be effected quickly. Sixth, all the arrangements with Northern Labs, including the terms of the lease and delivery to AMS, were done by Pratt and it was also Pratt who had liaised with Fraser of AMS. Seventh, Pratt prepared and signed the purchase order as the "Asia Pacific Manager" of the appellant. Here, I should add that Pratt had asserted that the purchase order was prepared by Ho who asked him to sign it. The DJ did not accept Pratt's claim that it was Ho who prepared the purchase order and asked him to sign. Eight, one piece of the equipment which was returned by AMS to the premises of the respondent was, on 2 March 2005, personally returned by Pratt to Northern Labs. He did not inform the respondent about his returning the one piece of equipment to Northern Labs. I have set out above (in [8]) his explanation as to why he did so return the piece of equipment to Northern Labs.

27 I should further mention that Pratt also claimed in his oral evidence in court that he had discussed the question of mark-up with Ewe for the purpose of quoting to AMS. However, the DJ did not accept this evidence because it was not set out in his affidavits of evidence-in-chief. Neither was the point put to Ewe in cross-examination.

28 As this finding by the DJ that the transaction, which the respondent had entered into with Northern Labs, was really a transaction of the appellant and is a finding of fact which the DJ made after hearing oral evidence of the witnesses for the parties and assessing their veracity, this court should be slow to disturb such a finding unless it is plainly wrong as being against the weight of the evidence : see *Seah Ting Soon t/a Sing Meng Co Wooden Cases Factory v Indonesian Tractors Co Pte Ltd* [2001] 1 SLR 521 at [22]; *Clarke v Edinburgh & District Tramways* (1919) SC(HL) 35 at 36 . In my opinion, I do not think one can justifiably say that this finding is plainly wrong. On the contrary, I would say there were reasonable bases for the DJ to come to that conclusion.

29 On the basis of this finding, even though the parties did not specifically address the question of indemnity and had only reached an understanding on the commission which the respondent would receive for facilitating the arrangement, it would be reasonable to imply an undertaking to indemnify (see *Eastern Shipping Co* per Lord Wrenbury at 182-183 quoted in [16] above).

Whether the cause of action for an indemnity was sufficiently pleaded

30 This issue concerns one of pleading. The point which the appellant makes is that the facts pleaded in the amended statement of claim (No. 2)[note: 5] are insufficient to constitute a cause of action in indemnity. I will now set out the pertinent parts of the pleadings.

> 4. On 4 February 2005, the [respondent] received by fax a purchase order no. C04-900175 from [AMS] for the rental of some equipment. The said fax was sent to the attention of one Mr Steve Pratt.
>
> 5. Advance Marine Services was not a customer of the [respondent], but was a customer and or known to the [appellant].
>
> 6. At all material times, Steve Pratt was not an employee or representative of the [respondent]. Steve Pratt was at all material times an employee and representative of the [appellant] stationed in Singapore and held the position of Asia Pacific Manager….
>
> 7. The [respondent] rented a space within its office premises at 14 Jalan Tukang to the [appellant] for a sum of US$1,750.00 per month. The rental commenced on 2 October 2004.
>
> 8. Even though the [appellant] rented a space from the [respondent], the [appellant] did not have its own communication facilities such as telephone and fax, but used the [respondent's] telephone and fax facilities.
>
> 9. On or about 4 February 2005, a Purchase Order no. MH014730, requested and issued by Steve Pratt was sent to [Northern Lab's] for the hire and sale of various goods.
>
> 10. Although the Purchase Order was prepared on the [respondent's] stationary, the Purchase was in fact issued by the [appellant] for and on its own behalf and account.
>
> 11. All arrangements for the delivery of the said goods were made by Steve Pratt as the [respondent] did not know [AMS].
>
> 11A. On or about 18 June 2005, the [respondent] paid [Northern Lab's] the sum of S$24,239.25 against [Northern Lab's] invoices RI/60A/02/05-P1 dated 31 March 2005 and RI/60A/02/05-P2 dated 30 April 2005, being the sale of chart paper and rental for the period 4 February to 30 April 2005.
>
> 12. In an email sent on 18 November 2005 to HL Engineering, Steve Pratt admitted that the [appellant] hired the goods to [AMS].
>
> 13. In the circumstances, if the [respondent] is found liable to [Northern Lab's] the [respondent] will seek an indemnity from the [appellant] for all amounts paid and or found due and payable by the [respondent] to [Northern Lab's], together with interest thereon and costs.

Specifically, the appellant contends that the respondent did not allege that the appellant had requested it to enter into the contract with Northern Labs on the appellant's behalf. All that was alleged in the pleadings is that the appellant should be liable for Northern Labs' claim because the leasing contract for the equipment was really between Northern Labs and the appellant and the respondent had nothing to do with it.

31 It is trite law that indemnity can arise from contract, express or implied, or by conduct. A right to indemnity arises where the relationship between the parties is such that either in law or in equity

there is an obligation upon one party to indemnify the other. I have already quoted the speech of Lord Wrenbury in *Eastern Shipping Co* (in [16] above), where he enunciated this principle. This principle is also stated in *Bullen & Leake & Jacob's Precedents of Pleadings* (London: Sweet & Maxwell, 13th Ed., 1990) at 457:

> Apart from any express promise, a contract of indemnity may often be implied from the relation existing between the parties or from other circumstances….

32 In the present case, what the respondent has set out in its statement of claim are the essential facts upon which its claim for indemnity is based. While I may agree that the position could have been made clearer if for instance, at para 10 of the statement of claim, it had further expressly stated to the effect that "for the reasons set out in para 3, the respondent had allowed the appellant to use the respondent's stationery to issue the purchase order to Northern Labs", I do not think that the statement of claim was so inadequate or defective such that the appellant did not know what was the cause of action it had to meet with the result that I ought to throw out the claim and set aside the judgment. It must be remembered that the need for clarity and precision in pleadings is so as to ensure that parties are not taken by surprise at trial (see *Asia Hotel v Malayan Insurance (M)* [1992] 2 MLJ 615 at 620 and *Boustead Trading (1985) v Arab-Malaysian Merchant Bank* [1995] 3 MLJ 331 at 341 ("*Boustead Trading*")). In this case, while the respondent's pleadings could have been clearer and more precise, its case was still reasonably set out and the appellant was thus not taken by surprise at trial. The DJ addressed this pleading point (at [38] of the GD) when she stated that the respondent "had pleaded the facts on which such rights had arisen sufficiently". She also added (in the same paragraph) that the respondent "are not required to plead the law". The appellant knew at the trial below what was the case it had to meet and did meet it head-on by placing its version of the events before the district court although eventually the DJ did not accept its version.

33 At the end of the day the question to be asked is whether there is injustice on account of the inadequacy in the pleadings. In this regard, it is vital to bear in mind the object of pleadings. Here I will quote the following statement of Isaacs and Rich JJ made in the Australian High Court case of *Gould & Biebwxk and Bacon v Mount Oxide Mines Ltd (In Liquidation)* [1916] 22 CLR 490 AT 517 (High Court of Australia):

> Undoubtedly, as a general rule of fair play, and one resting on the fundamental principle that no man ought to be put to loss without having a proper opportunity of meeting the case against him, pleadings should state with sufficient clearness the case of the party whose averments they are. That is their function. Their function is discharged when the case is presented with reasonable clearness. Any want of clearness can be cured by amendment or particulars. But pleadings are only a means to an end, and if the parties in fighting their legal battles choose to restrict them, or to enlarge them, or to disregard them and meet each other on issues fairly fought out, it is impossible for either of them to hark back to the pleadings and treat them as governing the area of contest.

34 Another instructive passage may be found in the Privy Council decision in *Sri Mahant Govind Rao v Sita Ram Kesho* [1897-98] 25 Ind App 195 where their Lordships stated at p 207:

> Their Lordships quite agree with the High Court that as a rule relief not founded on the pleadings should not be granted. But in this case, as their Lordships have been at pains to shew [*sic*], the substantial matters which constitute the title of all the parties are touched, though obscurely, in the issues; they have been fully put in evidence, and they have formed the main subject of discussion and decision in all three Courts. The High Court are [*sic*] right in treating the case as

not within the rule. As between plaintiff and defendant the case has been thoroughly tried out.

35 I would reiterate that while I have stated in [32] that the drafting of the statement of claim in the present case could have been better, its senses, particularly having regard to paras 9 to 11, are reasonably clear. From the defence, as well as the affidavits of evidence-in-chief filed by the appellant, it is clear to me that the appellant knew exactly the case it had to meet. Had the appellant entertained any real doubt as to the cause of action it had to meet or that the statement of claim was so defective, it would have applied to strike out the action or asked for further and better particulars. The fact that the appellant did not do either showed that it had no real problem with the statement of claim. I do not see any prejudice or injustice caused to the appellant on account of the pleadings (see *Boustead Trading*; *Siti Aisha binti Ibrahim v Goh Cheng Hwai* [1982] 2 MLJ 124; *Chua Gek Kuon v Seow Chai Seng* [1992] 1 SLR 270).

36 Accordingly I find that this technical issue raised by the appellant is wholly without merit.

Whether the loss claimed by the respondent was reasonable and in this regard, whether the respondent had mitigated its losses and had come to a reasonable settlement with Northern Labs

37 Under this issue, the appellant contends that the settlement terms were unreasonable. I would first make the observation that the appellant was invited to participate in the settlement negotiations with Northern Labs but had declined to do so. The appellant could have preserved its position on liability and participated in the negotiations on a without prejudice basis. Two main issues are raised by the appellant under this head: (i) the December 2005 rent should not have been paid to Northern Labs; (ii) the respondent had failed to mitigate its loss by (a) failing to regularly bill AMS over the period of the rental and (b) failing to settle the case earlier with Northern Labs which would, in turn, have reduced the costs payable to Northern Labs. Instead, the respondent protracted the matter until the date fixed for the commencement of trial.

38 Obviously, the respondent has the burden of showing that the terms of settlement reached with Northern Labs were reasonable. In determining the question of reasonableness, the DJ was guided very much by the following opinion of Singleton LJ in *Biggin v Permanite* [1951] 2 KB 314 at 325 ("*Biggin*"):

> … If upon the evidence, the judge is satisfied that the damages would be somewhere around the figure at which the claimants had settled, he would be justified in awarding the settlement figure. I do not consider that it is part of his duty to examine every item in those circumstances … The question is not whether the claimants acted reasonably in settling the claim, but whether the settlement was a reasonable one; and, in considering it, the court has to bear in mind the fact that costs would grow every day the litigation was continued. That is one reason for saying that it is sufficient for the purpose of the claimants if they satisfy the judge that somewhere around the figure of settlement would have been awarded as damages.

39 Reference may also be made, in this regard, to the observations by Judge of the Technology and Construction Court, Peter Bowsher QC in the English High Court decision of *P & O Developments Ltd v Guy's and St Thomas' National Health Service* [1999] BLR 3 (at [43]):

> Whether it was reasonable to enter into a settlement may raise quite different issues. A businessman asking himself whether it is reasonable to enter into a proposed settlement with another businessman with whom he is engaged in an ongoing project, is unlikely to limit himself to asking himself the same question as a judge considering whether a proposed settlement of

> litigation brought on behalf of an infant is reasonable, even supposing the businessman asks himself a question of the latter type at all. Circumstances may dictate to a businessman that it is reasonable to enter into an overall settlement even though some of the details are unreasonable. There, the overall settlement may be reasonable even though the details are not.

From these authorities, it is clear that in determining whether a settlement is reasonable, the court is concerned with the big picture and will not be caught up in scrutinising the details of the settlement (see also *Mirant Asia-Pacific Construction (Hong Kong) Ltd v Ove Arup Partners International Ltd and another* [2007] EWHC 918; *John F Hunt Demolition Ltd v ASME Engineering Ltd* [2007] EWHC 1507).

40 I turn now to the point concerning the December 2005 rental. The argument here is that since by November 2005, it was clear to all concerned that the equipment could not be located, the lease should be deemed to have been terminated in that month and that accordingly the December 2005 rental should not have been included to effect a settlement. It must be borne in mind that though by November 2005, the parties realised that the equipment could not be located and could have been lost, things were then still very much in a fluid state. If nothing else, time would have to be given to Northern Labs to obtain replacement equipment. Moreover, there was then no agreement yet to pay Northern Labs for the replacement cost. In the circumstances, I do not think that a settlement which included the December 2005 rental should be considered to be an unreasonable settlement.

41 Turning to the point on mitigation, the first circumstance which the appellant complains about is that while the respondent had made some payments to Northern Labs in June, it did not forthwith bill AMS for the rental due until November and if the respondent had billed AMS for the rental on a regular basis, the equipment that had gone missing would probably have been uncovered much earlier and rental would not have been incurred over such an extended period of time. Here I would quote the views of the DJ (at [53] of her GD):

> As I have found that although Eddie Ewe had given approval to proceed with the transaction, the transaction was effected entirely by Steve Pratt. He should therefore, have been the one to follow up on the transaction, especially when the matter was referred to him in June 2005. There was no evidence that William Ho even knew about the transaction, apart from the use of his initials in the purchase order that was signed by Steve Pratt and Eddie Ewe. Eddie Ewe said that he should have asked Stave to liaise with William Ho but was not aware if in fact he did. William Ho's evidence was that he was totally unaware of the transaction. Instead of chasing up on the equipment in June 2005, Steve Pratt's only concern at the time appeared to have been to distance himself and the third party from the transaction by instructing that the rental was not to be back-charged to the third party. In any event, as the equipment were never returned, the plaintiff would not have agreed to terminate the lease at the time unless there was an agreement to pay for the missing equipment.

42 As the leasing transaction with Northern Labs was found by the DJ to be to the account of the appellant, then it was its duty to bill AMS or Pratt should have asked the staff of the respondent to assist. Pratt knew that some payments were made by the respondent to Northern Labs in June 2005. Yet, as the DJ so aptly observed, again quoting from [53] of her GD:

> Instead of chasing up on the equipment in June, Steve Pratt's only concern at the time appeared to have been to distanced himself and the the [respondent] from the transaction by instructing that the rental was not to be back-charged to the [respondent].

43 Of course, ordinarily, in the course of their interactions within the scope of the agency arrangement, the appellant would not have to handle invoicing and track payment by customers.

Pratt sought to say that besides Ewe, Ho also knew of this transaction. But, as indicated earlier (at [10]), Ho denied it. Be that as it may, while the evidence is in conflict, it does indicate that no request was made by Pratt to the staff of the respondent that he would require assistance in that regard.

44 Moreover, it seems to me that the appellant is taking inconsistent positions. On the one hand, it contends that the equipment was never delivered by Northern Labs to AMS. On the other hand, it says that the respondent should have settled the claim of Northern Labs much earlier so that costs would not accumulate. One can therefore see that it was not as if there were no difficulties in the way of the respondent settling the matter earlier. Admittedly, at the end, the respondent decided to go its separate way and settle the claim without the cooperation of the appellant. In the circumstances, I do not accept the appellant's contention that settling the claim of Northern Labs at that juncture was unreasonable and I therefore find that the costs which the respondent agreed to be payable to Northern Labs are not unreasonable. I would reiterate what Singleton LJ said in *Biggin* that in determining the reasonableness of a settlement the court does not go into a minute examination of each item. It is the overall picture that matters.

Whether the DJ erred in allowing the amendment to the respondent's statement of claim to include the claim for the $24,239.25 it had paid Northern Labs

45 The fifth issue before me is the subject of District Court Appeal No. 22 of 2008/W. The respondent had in June paid Northern Labs the sum of $24,239.25 for chart paper and for rental of the equipment from 4 February to 30 April 2005. It had, however, failed to include this sum in its original statement of claim. After the suit between Northern Labs and the respondent was settled on 2 February 2007, the respondent applied for leave to amend its statement of claim to take into account the settlement. Leave was given on 19 March 2007 and the respondent amended its statement of claim but again it failed to include the claim for the $24,239.25. Subsequently, after written closing submissions were tendered, the DJ invited the respondent to file an application to amend its statement of claim to include the claim for the $24,239.25 and it was only then that the respondent applied to do so by way of Summons No 5169 of 2008.

46 The appellant argued that the DJ erred in inviting the respondent to amend its pleadings and in allowing the amendment. It claimed to have been prejudiced by the DJ's decision to allow the amendment for two reasons: first, the appellant had relied on the respondent's failure to claim the $24,239.25 as an admission of its liability for the transaction with Northern Labs; and second, the amendment was made at a very late stage in the proceedings.

47 In my view, the DJ did not err in allowing the amendment. In deciding whether to allow an amendment of pleadings, the essential question was whether prejudice would be caused bearing in mind that the later an amendment is made, the greater the likelihood of causing prejudice (see *Chwee Kin Keong v Digilandmall.com Pte Ltd* [2004] 2 SLR 594 at [87]). I found it difficult to accept the first reason given by the appellant as to why it had been prejudiced as it seemed to me that the claim for the $24,239.25 was a logical consequence of the respondent's claim for indemnity for liabilities incurred in the transaction with Northern Labs. After all, the sum of $24,239.25 was paid to Northern Labs pursuant to the transaction. As such, the failure to include the claim for the $24,239.25 in the first place appeared to be a mistake or oversight on the part of the respondent in drafting its pleadings rather than an admission of liability. The amendment merely corrected the pleadings by including that which ought to have been included in the first place. For this reason, I was also of the view that allowing the amendment even at a late stage did not cause any prejudice to the appellant which could not have been compensated by costs (which were eventually awarded to the appellant).

48 On a more technical point, the appellant argued that the DJ ought not to have allowed the application because the respondent had failed to file a supporting affidavit. In my view, the DJ was fully cognisant of the reasons for which the amendment had to be made and did not require a supporting affidavit to help her decide whether to allow the amendment. After all, it was the DJ who had invited the respondent to amend the pleadings in the first place. Further, it was also fairly obvious (as explained above at [44]) that the claim for the $24,239.25 was a logical consequence of the respondent's claim for indemnity. For the foregoing reasons, I find that the DJ did not err in allowing the amendment.

Conclusion

49 In the result, I would dismiss the appeal with costs and the usual consequential orders.

[note: 1]Record of Appeal Vol III p 725.

[note: 2]Record of Appeal Vol III p 580.

[note: 3]Record of Appeal Vol II p 356 at 359.

[note: 4]Record of Appeal Vol III p 725.

[note: 5]Record of Appeal Vol II at 550.