Multistar Holdings Ltd
v
Geocon Piling & Engineering Pte Ltd

[2016] SGCA 01

Court of Appeal — Civil Appeal No 28 of 2015
Sundaresh Menon CJ, Chao Hick Tin JA and Andrew Phang Boon Leong JA
21 October 2015

Civil procedure — Pleadings — Amendment

11 January 2016

Chao Hick Tin JA (delivering the grounds of decision of the court):

Introduction

1 This appeal arose from the decision of the High Court judge ("the Judge") as reported in *Geocon Piling & Engineering Pte Ltd (in compulsory liquidation) v Multistar Holdings Ltd (formerly known as Multi-Con Systems Ltd) and another suit* [2015] 3 SLR 1213 ("the GD"). The Appellant, Multistar Holdings Ltd ("Multistar"), contended that the Judge erred in granting the Respondent, Geocon Piling & Engineering Pte Ltd ("Geocon"), leave to amend its statement of claim to include a new claim which was time-barred.

2 One of the central concerns where amendments are sought to be made after the expiry of the limitation period is whether they seek to introduce a new cause of action. An amendment that does not advance a new cause of action but

rather makes good the error of failing to tell the complete story at the outset would be allowed, whereas attempts to include a claim which is distinct from those originally pleaded under the guise of an amendment would be denied where in the meantime limitation has set in in relation to that claim. In the court below, Geocon sought leave to make two sets of amendments to its statement of claim. Based on the parties' written submissions, we initially had the impression that the first set of amendments that Geocon sought to introduce into its statement of claim fell within the latter category, until counsel for Geocon, Mr Leo Cheng Suan ("Mr Leo"), in the course of his oral submission before us drew our attention to the particulars contained in an annexure that was appended to the original statement of claim. While we observed that Geocon's pleadings left much to be desired, we were satisfied that certain particulars contained in this annexure on the cause of action that Geocon was seeking to introduce by way of the amendment was not really "new". Hence, we dismissed the appeal.

3 These grounds are issued because, while we did not overturn the Judge's decision, some aspects of the Judge's reasoning needed further reconsideration. First, we thought the Judge erred in defining what constitutes a new "cause of action" within the meaning of O 20 r 5(5) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the ROC"). Second, the Judge fell into the error of treating the amendment as a routine application under O 20 r 5(1) of the ROC when the correct provision to apply in relation to the application should have been O 20 r 5(2) read with r 5(5) of the ROC, which requires a different test to be applied. In fact, because of this misconception, the Judge refused to even hear Multistar's request to make further submissions on the latter set of provisions, and decided the matter solely on the basis of O 20 r 5(1). Our analysis on these two points follows hereunder.

Facts

The trial below

4 In the suit, Geocon claims for reimbursement from Multistar for works done in respect of two stages of a construction project. These were duly completed but the amount owing to Geocon for its services remained outstanding. Upon Geocon being wound up by its creditors, the liquidator commenced the suit to recover the debt owed by Multistar. Multistar refused to pay, and a trial was held to determine its liability to Geocon. The trial reached the submissions stage, when a ruling by the Judge on the amendment issue brought about the present appeal.

5 Multistar is the parent company of a group of companies in the engineering and construction business. Geocon was a wholly-owned subsidiary of Multistar. Until Geocon went into compulsory liquidation in 2006, it was the specialist piling sub-contractor in the Multistar group of companies.

6 In 2001, the Land Transport Authority ("LTA") awarded a contract known as C421 to SembCorp Engineers and Constructors Pte Ltd ("Sembcorp"). Sembcorp's scope of work under C421 was to construct part of the Kallang Paya Lebar Expressway ("KPE") from the East Coast Park ("ECP") to Nicoll Highway. Its scope of work included, but was not limited to, the bored piling at all locations along this stretch of the KPE.

7 Sembcorp subcontracted the entire scope of its bored piling works under C421 ("subcontract works") to Multistar. The Sembcorp-Multistar subcontract was a lump sum contract, subject to variations, valued at $27.48m.

8 Multistar in turn sub-contracted the entire scope of its work under the Sembcorp-Multistar subcontract to Geocon. The Multistar-Geocon subcontract stipulated a price of $26m, but was otherwise expressed to be on the same terms as the Sembcorp-Multistar subcontract. Therefore, it was also a lump sum contract subject to variations.

9 Geocon, further subcontracted its entire scope of work under the Multistar-Geocon subcontract to a third party called Resource Piling Pte Ltd ("Resource Piling"), valued at $18.7m. Multistar was to pay the difference of $7.3m to Geocon as a project management fee.

10 In the carrying out of the subcontract works, Multistar bypassed the chain of subcontracts and dealt directly with Resource Piling as if the latter was a direct contractual counterparty. Resource Piling presented its progress claims directly to Multistar and in turn, progress payments were paid directly by Multistar to Resource Piling.

11 Resource Piling did not follow through with the subcontract works to completion. It stopped works in two stages. By late 2002, Resource Piling stopped all work at a location known as "ECP South Location". However, it continued its work at all other locations until the end of April 2004 when it stopped work even at these other locations. At the trial below, the case that Geocon ran was that on each occasion when Resource Piling stopped work, it took over and continued the uncompleted subcontract works.

12 According to Geocon, the total costs incurred by Geocon for the project were recorded in Geocon's accounting books with two separate cost ledgers:[1]

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[1] 2 Appellant's Core Bundle ("ACB"), Tab 7, Lau Wei Koon's AEIC.

(a) GC1063, which stated Geocon's costs incurred from January 2002 until the end of April 2004.

(b) GC1077, which stated Geocon's costs incurred from May 2004 to the end of 2005.

13 In 2004, Multistar sued Resource Piling for breaching its contractual obligations on the basis that the parties were in direct contractual relationship. Resource Piling in turn sued both Multistar and Geocon. Both actions were tried together. Resource Piling emerged victorious in this set of litigation; Geocon was found liable to pay damages to the tune of $3.3m to Resource Piling. The Judge referred to this set of litigation in his GD as the "2004 Litigation".

14 Geocon did not pay its judgment debt due to Resource Piling and was as a result wound up in June 2006. A liquidator was appointed for Geocon and he instituted the present action against Multistar for monies due to Geocon under the Multistar-Geocon subcontract.

15 The total claim which Geocon made in the present action against Multistar is for the sum of $10.9m. The original statement of claim filed on 31 January 2011 ("the Original SOC") disclosed that this figure was arrived at as follows:[2]

(a) $1.8m as being the sum due to Geocon in respect of GC1063;

(b) $6.75m being the total sum due to Geocon in respect of GC1077; and

[2] 2 ACB, pp 197-198.

(c) $2.3m being the amount overcharged by Multistar.

16 Multistar in its defence averred that Geocon's claims were barred by limitation; moreover, even if limitation were not applicable to the claims, whatever claims Geocon was entitled to should be based on the rates specified in the Multistar-Geocon subcontract which was entered into between the parties and not on a reimbursement basis.[3]

Geocon's application to amend its SOC

17 The action proceeded to trial. Evidence was adduced by both Geocon and Multistar over seven days. It was only after written submissions had been tendered by both parties that Geocon applied to amend the Original SOC. To provide some context to the proposed amendments, it will be recalled that Resource Piling stopped work in two stages – first in 2002 at the ECP South Location ("the First Stage") and second in 2004 in respect of the remaining locations ("the Second Stage") (see [11] above). The case ran by Geocon at the trial below was that on both occasions, it took over from Resource Piling and completed the works. However, the problem is that in the Original SOC, Geocon only set out – in clear terms – facts relating to the Second Stage. The fact that it had taken over Resource Piling's work in 2002 was not pleaded, at least not in clear and express terms.

18 The Original SOC read as follows:

> 11. Sometime around **April 2004**, disputes arose between Resource Piling / the Defendants over the Resource Piling Sub-contract. As a result, Resource Piling ceased work for Contract C421.

[3] 2 ACB p 52, Defence (Amendment No. 4) ("Defence") at para 21.

> 12. Following Resource Piling's exit, the Defendants engaged the Plaintiffs to complete the **remaining work** at Contract C421. This contract was referred to internally between the Plaintiffs and the Defendants as GC1077.
>
> …
>
> 14. In [the 2004 litigation], the following evidence was given by Tan [a witness for both Multistar and Geocon which were then still related] in his Affidavit of Evidence in Chief dated 8 November 2005 ("Tan's AEIC"):
>
> …
>
> (ii) After Resource Piling ceased the works for Contract C421, the Defendants engaged the Plaintiffs to complete the remaining works for Contract C421 "*on a purely reimbursement basis*" (Paragraph 47 of Tan's AEIC).
>
> [emphasis in bold added; emphasis in italics original]

19 At the trial below, Geocon led evidence on the works done in relation to the First Stage, and it was evident that Geocon wanted Multistar to reimburse it for that part of the works, on top of the works that it had done at the Second Stage. The relevant amended parts of the statement of claim read ("the Amended SOC"):

> 11. Sometime around October 2002 ~~April 2004~~, disputes arose between Resource Piling and the Plaintiffs / the Defendants over the Resource Piling Sub-contract. As a result, Resource Piling ceased work at the ECP South Location of the works. Further disputes arose in April 2004 after which Resource Piling ceased work for Contract C421 altogether.
>
> 12. Following Resource Piling's exit in April 2004, the Defendants engaged the Plaintiffs to complete the remaining work at Contract C421. This contract was referred internally between the Plaintiffs and the Defendants as GC1077.
>
> …
>
> 14. In [the 2004 litigation], the following evidence were [sic] given by [Mr Tan] in his Affidavit of Evidence in Chief dated 8 November 2005 ("Tan's AEIC"):
>
> …

> (ii) After Resource Piling ceased the works ~~for Contract C421~~, the Defendants engaged the Plaintiffs to complete the works at the ECP South Location ~~remaining works for Contract C421~~ "*on a purely reimbursement basis*" (Paragraph 47 of Tan's AEIC) and the remaining works for Contract C421 "*at additional costs to [Multistar]*" (Paragraph 54 of Tan's AEIC).
>
> [emphasis in original]

20 The above amendments formed the first set of proposed amendments. The second set of proposed amendments put forward four additional alternative claims against Multistar, the principal basis for which was Geocon's alternative case that Multistar was liable on a lump-sum basis as opposed to its original case that it was liable on a reimbursement basis.[4] We found the Judge's summary of the second set of proposed amendments useful and we reproduce them in full as follows:

> 42 The second category of amendments puts forward four additional alternative claims against Multistar. These additional alternative claims are as follows:
>
> (a) Geocon's first additional alternative claim is for the sum of $8.6m. This amounts to nothing more than withdrawing[5] its third claim. Thus, Geocon derives the $8.6m simply by adding its first claim to its second claim and omitting its third claim.
>
> (b) Geocon's second additional alternative claim pleads that Multistar is indebted to it in the sum of $0.05m … That figure is Multistar's indebtedness to Geocon as recorded in Geocon's own accounts for the year ended 31 December 2005. This claim is founded on the same basis as Multistar's counterclaim for $0.66m but rejects Multistar's entitlement to deduct $0.71m …
>
> (c) Geocon's third additional alternative claim transplants without any change its claim for $6.8m … from its reply into its statement of claim. Geocon thus

[4] Transcript, 16 January 2015, page 12 (lines 19-30).

[5] Transcript, 16 January 2015, page 8, (lines 16 to 26).

> claims in its statement of claim that Multistar is indebted to it in the sum of $6.8m.
>
> (d) Geocon's fourth alternative claim pleads expressly, in the body of the statement of claim, the content of an existing prayer that Geocon's damages be assessed.
>
> 43 Of these four additional alternative claims, it is only the second and third which are material. These two now advance in Geocon's statement of claim the alternative case that Geocon is entitled to be paid on the lump sum basis. That case has been found until now only in its reply.

21 Multistar objected to both categories of amendments. It argued that the amendments would prejudice Multistar, but its arguments did not find favour with the Judge. After the Judge granted Geocon leave to amend the pleadings, Multistar requested for an opportunity to present further arguments, arguing that the amendments violated O 20 r 5(2) read with 5(5) of the ROC as it added a new cause of action that did not arise from the same facts supporting the cause of action pleaded in the Original SOC.

Decision below

22 In his written grounds, the Judge concluded that Geocon's amendments would not cause any prejudice to Multistar for which it could not be compensated by costs (following *Chwee Kin Keong and others v Digilandmall.com Pte Ltd* [2005] 1 SLR(R) 502 ("*Digilandmall*") at [84]-[88]). While the amendments came at a very late stage, it being at the end of a trial and after both parties have exchanged their written closing submissions, Geocon was not seeking to reopen the evidential phase of the trial to adduce further evidence to support the amendments. Multistar's prejudice was in having to amend its closing submissions to address the amendments, and that form of prejudice was easily rectifiable by an award of costs. The Judge found that all the evidence necessary to deal with the amended case had already been placed

before him and the amendments merely formalised what was already in play in the suit so that the submissions and decision could concentrate on the real dispute rather than being distracted by technical points of pleading (at [102] of the GD).

23 The Judge also rejected Multistar's request to make further arguments in relation to O 20 r 5(2) read with r 5(5) of the ROC. He declined to hear Multistar on the merits of the proposed line of argument (at [108] of the GD). But in his GD, the Judge went on to discuss by way of *obiter dicta* why, in any event, Multistar's arguments under this heading would likely have failed. He opined as follows:

> (a) The amendments did not add a new cause of action because Geocon was not seeking a different relief or remedy using the amendments; instead it was merely inserting "additional factual material" in support of its existing cause of action on the reimbursement basis (at [128] of the GD).
>
> (b) Even if the amendments purported to add a new cause of action, they arose from substantially the same facts as those pleaded in the Original SOC. Multistar would suffer no prejudice because the evidence relating to Geocon's amended case was already before the court and Multistar would be accorded an opportunity to address the court on the amended case (at [145] of the GD). The Judge's basic point was, and here we quote him from his GD at [146], that even if the amended cause was new, it "arises out of *precisely* the same facts as Geocon's existing cause of action" (emphasis in original).

Our decision

Overview

24 It is well-established law that the Court of Appeal is a creature of statute and hence is only seised of jurisdiction that has been conferred upon it by statute (*Blenwel Agencies Pte Ltd v Tan Kee King* [2008] 2 SLR(R) 529 at [23]). Section 29A of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA") provides that the Court of Appeal has jurisdiction over appeals from any order of the High Court subject to provisions in the SCJA or any other written law modulating the terms of the jurisdiction it has. Section 34 of the SCJA is one such provision: s 34(1) sets out matters that are non-appealable to the Court of Appeal while s 34(2) sets out matters which are appealable only with leave. For present purposes, s 34(1)(*a*) is the relevant provision, which reads:

> **34.** —(1) No appeal shall be brought to the Court of Appeal in any of the following cases:
>
> > (*a*) Where a Judge makes an order specified in the Fourth Schedule, except in such circumstances as may be specified in that Schedule …

25 As is apparent from s 34(1)(*a*), matters listed under the Fourth Schedule, unless otherwise specified, are not appealable to the Court of Appeal. The relevant provision governing the present appeal is paragraph (*g*), which reads as follows:

> No appeal shall be brought to the Court of Appeal in any of the following cases:
>
> > (*g*) where a Judge makes an order giving leave to amend a pleading, except if –
> >
> > > (i) the application for such leave is made **after the expiry of any relevant period of limitation**

> **current at the date of issue of the writ of summons**; and
>
> (ii) the amendment is an amendment to correct the name of a party or to alter the capacity in which the party sues, or **the effect of the amendment will be to add or substitute a new cause of action**.
>
> [emphasis added in bold]

26 Paragraph (g) makes clear that an order granting leave to amend a pleading is non-appealable, unless the amendment application was made after the expiry of the limitation period current at the date of the writ; and that – for present purposes – the amendment adds a new cause of action to the original statement of claim. Given that Multistar's appeal pertained to the Judge's order giving leave to Geocon to amend a pleading, the question whether Multistar could bring itself within the exception contained in paragraph (g) of the Fourth Schedule would thus be vitally important.

27 The exception in paragraph (*g*) would allow Multistar's appeal to proceed only upon the satisfaction of two conditions:

(a) at the time of the application, the applicable limitation period has expired; and

(b) the amendment would in effect add a new cause of action.

28 If Multistar were found to have a right to appeal under paragraph (*g*) of the Fourth Schedule, O 20 r 5(2) read with r 5(5) would arise for consideration. The two provisions read as follows:

> **Amendment of writ or pleading with leave (O. 20, r. 5)**
>
> (2) Where an application to the Court for leave to make the amendment mentioned in paragraph (3), (4) or (5) is made **after any relevant period of limitation current at the date of issue of the writ has expired**, the Court may nevertheless

> grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so.
>
> (5) An amendment may be allowed under paragraph (2) notwithstanding that **the effect of the amendment will be to add or substitute a new cause of action** if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment.
>
> [emphasis added in bold]

29 O 20 r 5(2) read with r 5(5) has been said to contain four elements as follows, upon the satisfaction of which the court would have the power to allow the amendment (see *Lim Yong Swan v Lim Jee Tee* [1992] 3 SLR(R) 940 ("*Lim Yong Swan*") at [24] and [28]; *Hancock Shipping Co v Kawasaki Heavy Industries Ltd, The Casper Trader* [1992] 3 All ER 132 at 135 ("*The Casper Trader*"), *per* Staughton LJ):

(a) the amendment introduces a new cause of action;

(b) the new cause of action would have been time-barred if raised in a new action on the date when the application was made;

(c) the new cause of action arises out of the same facts or substantially the same facts as the originally pleaded cause of action; and

(d) the court thinks it just to allow the amendment.

30 A side-by-side comparison of the wording of paragraph (*g*) and O 20 r 5(2) read with r 5(5) would show that the two elements contained in the former provision are identical to the first two elements contained in the latter set of provisions (see the portions of the respective provisions emphasised in bold above at [25] and [28]). The result of this legislative framework is that paragraph

(g) sets the threshold for the Court of Appeal to consider the remaining two elements of O 20 r 5(2) read with r 5(5) (see [29(c)] and [29(d)] above). In the context of this appeal, this meant that if this court was satisfied that the amendment application added a new cause of action and that the new cause of action would have been time-barred had it been raised in a new action at the date of the amendment application, the court would go on to consider whether, in approving Geocon's amendment application, the Judge exercised his discretion correctly in relation to the latter two elements of O 20 r 5(2) read with r 5(5). Conversely, if either of the first two conditions was not fulfilled, then Multistar's appeal would fail, it being a decision which was non-appealable. The legislative overlap between paragraph (*g*) and O 20 r 5(2) read with r 5(5) gave rise to the following questions, which we considered in sequential order:

(a) Did the amendment application introduce a new cause of action?

(b) If yes, would the new cause of action be time-barred had it been raised in a fresh suit on the date of the amendment application?

(c) If yes, did the new cause of action arise out of the same facts or substantially the same facts as the originally pleaded cause of action?

(d) If yes, did the court think it is just to allow the amendment?

Cause of action

31 We first considered whether the amendment application introduced a new cause of action.

The legal principles

32 Limitation of actions imposes time-limits within which notice of claims of a particular kind must be given to the other party. In Singapore, limitation

periods find expression in the Limitation Act (Cap 163, 1996 Rev Ed) ("the Limitation Act"). If the potential claimant fails to do so within the stipulated time-frame, he will be barred from bringing his claim afterwards. In the context of civil procedure, questions of limitation often arise when a claimant seeks to change the character or scope of the action after the expiry of the limitation period.

33 Traditionally, the English cases demonstrate that the limitation policy would apply with equal force to bar claimants from bringing fresh claims within existing actions as it would to fresh actions. The old rule of practice would not allow a claimant to amend its statement of claim if it had the effect of allowing the claimant to set up a cause of action which would otherwise be barred by the Limitation Act had it been brought by way of a fresh action (see *Weldon v Neal* (1887) 19 QBD 394). The reason for this position is obvious. Permitting the claimant to introduce a new cause of action against the defendant by way of an amendment instead of bringing a fresh suit would, in effect, allow him to circumvent the Limitation Act because the new claim, having been introduced into the statement of claim, will be treated as having been instituted, not on the date of the amendment, but on the date of the original writ. The operation of this concept of relation back would prejudice the defendant in that he would be deprived of his right to raise a limitation defence which would otherwise have availed to him had the claimant commenced fresh proceedings against him in respect of the new claim. A claimant who wants to amend its pleadings after the limitation period has expired would thus have to show that he is not trying to introduce a new cause of action.

34 What constitutes a "cause of action"? In our judgment, "cause of action" simply means the essential factual material that supports a claim. This definition is of considerable vintage, and its roots can be traced back to the oft-cited case

of *Cooke v Gill* (1873) LR 8 CP 107, in which Brett J defined it as "every fact which is material to be proved to entitle the plaintiff to succeed". One of the decisions in more recent times that applied this definition is the well-known decision of *Letang v Cooper* [1964] 2 All ER 929. In this case, the plaintiff was run over by a motor vehicle negligently driven by the defendant. She sued the defendant for negligence and alternatively trespass to the person, with the latter cause being taken to bypass the shorter limitation period prescribed for the former. The particulars of negligence pleaded provided the foundation of the claim in trespass. The English Court of Appeal dismissed the negligence claim for being time-barred. As for the claim in trespass, the court also dismissed it. While the labels attached to these claims were different, they were essentially the same claim because they both arose from the same set of facts. Lord Diplock held as follows (at 935):

> The factual situation on which the plaintiff's action was founded is set out in the statement of claim. It was that the defendant, by failing to exercise reasonable care, of which failure particulars were given, drove his motor car over the plaintiff's legs and so inflicted upon her direct personal injuries in respect of which the plaintiff claimed damages. *That factual situation was the plaintiff's cause of action.* It was the cause of action for which the plaintiff claimed damages in respect of the personal injuries which she sustained. That cause of action of factual situation falls within the description of the tort of negligence …
>
> It is true that that factual situation also falls within the description of the tort of trespass to the person. But that, as I have endeavoured to show, does not mean that there are two causes of action. *It merely means that there are two apt descriptions of the same cause of action. It does not cease to be the tort of negligence because it can also be called another name.* …
>
> [emphasis added]

35 It is evident that Lord Diplock was not so much concerned with the relief or remedy sought by the claimant, but rather the factual material undergirding the claim. *Marshall v London Passenger Transport Board* [1936] 3 All ER 83

was another case that adopted this fact-centric approach. The plaintiff alleged that he was injured by the negligent driving of a tramcar by the defendant's servant and sought, after the expiry of the limitation period, to set up a claim in negligence by the defendants in failing to keep the highway and tramway in repair, that being a duty laid on them by statute. The amendment was not allowed because the latter allegation is premised on "quite a different allegation of fact". Bad repair of road and the tramlines implicate a "quite new sets of facts" than would negligent driving.

36 *Dornan v J E Ellis Co Ltd* (1961) 1 QB 583 applied *Marshall*, but arrived at the opposite result. In that case, the plaintiff employed in the defendant's factory suffered injury to his eye when a drill which was being operated by a fellow-worker snapped into pieces, one of which flew into the workman's eye. The writ issued claimed for personal injuries caused by the negligence of the defendant company and/or their servants. After the expiry of the limitation period, the plaintiff applied for leave to amend his statement of claim by adding to the negligence particulars that the defendant company was vicariously liable. The English Court of Appeal allowed the amendment, holding that the plaintiff was not trying to add a new cause of action by way of the new particulars (at 593-594):

> … The story that is now set up by the plaintiff is the same story as that set up all along, namely, that the plaintiff lost his eye from a piece of the drill which was being operated by Stewart. And, as I think, what is now sought to be done is not to make out a new case of negligence, but to *persist in the old story* and invite the judge at the trial to approach it, to interpret it, from a different angle or aspect. It is a different approach to the same main story of the accident.
>
> [emphasis added]

Thus, notwithstanding the different labels given the court found that the cause of action was one and the same. The factual story remained substantially intact; what the plaintiff did was to give it a different legal characterisation.

37 These three cases were all decided prior to the enactment of O 20 r 5 of The Rules of Supreme Court Act 1965 (UK) ("the RSC") which gave the court express power to grant leave to amend a writ or pleading in a number of situations where limitation had set in. Order 20 r 5(2) and r 5(5) of the RSC gave effect to the court's powers insofar as the amendments introduced a new cause of action. The RSC was swept away in April 1999 to give way to the new Civil Procedure Rules ("the CPR"), but the provisions of the former O 20 r 5 of the RSC, for present purposes, remained substantially the same as CPR rule 17.4 (see *BPC Hotels Ltd v Brooke North (a firm) and another* [2013] All ER (D) 88 at [65]). Both the old rules (*ie*, the RSC) and the new rules (*ie*, the CPR) were intended to implement s 35 of the UK Limitation Act 1980 ("the 1980 Act"). Sections 34(4) and (5) of the 1980 Act are the provisions relevant to the matter before us and they read as follows:

> (4) Rules of court may provide for allowing a new claim to which subsection (3) above applies to be made as there mentioned, but only if the conditions specified in subsection (5) below are satisfied, and subject to any further restrictions the rules may impose.
>
> (5) The conditions referred to in subsection (4) above are the following - (a) in the case of a claim involving a new cause of action, if the new cause of action arises out of the same facts or substantially the same facts as are already in issue on any claim previously made in the original action …

38 The relevant rule in the "rules of court" is CPR 17.4(2) which provides:

> The court may allow an amendment whose effect will be to add or substitute a new claim, but only if the new claim arises out of the same facts or substantially the same facts as a claim in respect of which the party applying for permission has already claimed a remedy in the proceedings.

39 The UK House of Lords interpreted the 1980 Act and CPR 17.4(2) to have the effect of retaining the scope of the court's powers to allow an amendment insofar as it adds a new cause of action (*Roberts v Gill & Co and others* [2010] UKSC 22 at [38]).

40 Despite the streams of legislative changes in 1965 and 1999, English courts continued to apply the classic definitions of "cause of action" as defined by the earlier cases (see for instance, *British Airways plc v Apogee Enterprises Inc* [2007] EWHC 93 at [7]). This is important to our analysis because our O 20 r 5 is not only modelled after RSC O 20 r 5; both provisions are almost *in pari materia*.

41 *Steamship Mutual Underwriting Association Ltd v Trollope & Colls (City) Ltd* (1986) 33 B.L.R. 77 ("*Steamship*") is useful insofar as it demonstrates that the legislative amendments did not alter the legal definition of a "cause of action". In that case, the plaintiffs, building owners, had commenced an action against the contractors, the architects and the structural engineers for damages for alleged defects in the air conditioning plant in the building. Two and a half years after the delivery of the statement of claim, the plaintiffs applied to amend it to claim also damages for alleged defects in the structure of the walls. The English Court of Appeal applied *Letang v Cooper* and concluded that the amendments introduced a new cause of action. While both claims pertained to defects, they were treated as different causes of action because the subject matter of the defect was different.

42 *Co-operative Group Ltd v Birse Developments Ltd and another* [2013] 148 ConLR 264 was another construction case which we found useful in illustrating the concepts we have discussed. The plaintiff sued the defendant-contractor alleging cracks in the concrete floors of the warehouse constructed

by the defendant. Its amendment after the expiry of the limitation period alleged that the steel fibre content within the concrete slabs was also inadequate and as a result the concrete flooring may not be able to withstand heavy load. The English Court of Appeal rejected the amendments, holding:

> [23] … [T]he original allegation here was of a group of relatively disparate defects in the floors capable of disparate replacement and repair. There was no existing case of structural inadequacy of the entirety of the concrete floors in the two warehouses. What is now alleged is that the concrete of which the floors are constructed suffers from a systemic defect which must result in its entire condemnation and replacement because of its inability to withstand the design load to which it has never yet been subjected. The allegation by way of reamendment is in my judgment an allegation of an entirely new and different cause of action. It relies upon a particular and specific facet of the contractual duty owed of which no breach was hitherto asserted, *viz* the design capability to withstand a pallet racking leg load of 70 kN. The relevant specific duties of which breach had hitherto been alleged are the obligation to design to BS 8110, to design and build in accordance with and to comply with that part of the specification which requires sawn joints at not less than 9 metres spacing. There is no reference to any of these duties in para 33A because they are irrelevant to the case being there advanced. The new allegation relies upon facts wholly different in kind from those hitherto relied upon, *viz* the inadequate steel fibre content. Finally the consequences alleged are, again, wholly different in kind from those hitherto alleged, giving rise to the need to replace the entirety of the two floors and thereby rendering academic the question whether the contractors were, so far as concerns the concrete floors in the warehouses, in breach of duty in the manner hitherto alleged.

43 The facts of *Circle Thirty Three Housing Trust Ltd v Fairview Estates (Housing) Ltd* (1985) 4 Const LJ 282 ("*Circle Thirty Three*") provides a good contrast. In this case, the plaintiff employed the defendants to design and build a housing development. Defects appeared and the plaintiff sued, alleging only defective workmanship. After limitation has set in, the plaintiff applied to amend its statement of claim to plead defective design. The Court of Appeal allowed the amendment. Having regard to the fact that within the statement of

claim there was a "long list of defects alleged which was annexed to particulars" and comments were made against them stating, in one or two cases, "design", the court concluded that the cause of action relating to defective design had – in substance – been sufficiently pleaded:

> It seems to me that the statement of claim is really saying that here was a contract under which the first defendants undertook to produce houses of a reasonable standard, and that they failed to do. … [B]earing in mind that the defendants were responsible for the whole thing …
>
> … [T]his is really a complaint that the plaintiffs were not given the buildings that they contracted for. If the statement of claim is properly read as a breach of the obligation to provide a proper building, then this amendment does not introduce a new cause of action; it merely asserts the respects in which the defendants have fallen short of their obligation – either by failing to design, or by failing to construct but, in any event, leading to a result that produced an inferior building.

44 The principle that *Circle Thirty Three* stands for is that the factual material pleaded in the original statement of claim is not to be construed in a technical or overly strict manner. One must appreciate the substance of the allegation in order to determine whether the factual material introduced by the amendment is really something that catches the defendant by surprise.

45 In *Paragon Finance plc v D B Thakerar & Co (a firm)* [1999] 1 All ER 400 ("*Paragon Finance*"), the English Court of Appeal affirmed the principles in *Letang v Cooper* in the following terms:

> (a) Only facts which are material to be proved are to be taken into account. The pleading of unnecessary allegations or the addition of further instances or better particulars do not amount to a distinct cause of action (at 405).

(b) An amendment to make an allegation of intentional wrongdoing where previously no intentional wrongdoing was alleged constitutes the introduction of a new cause of action (at 406, 418 and 420).

46 The facts of *Savings and Investment Bank Ltd v Fincken* [2001] All ER (D) 70 provides context to the first of the two propositions established in *Paragon Finance*. In this case, a deed of settlement was made between the plaintiff and the defendant. Its terms included, *inter alia*, that the defendant had made full disclosure of all assets he owned worth more than £5,000 and that the plaintiff would discontinue bankruptcy proceedings against the defendant. The claimant then discovered that the defendant owned property more than £5,000 that he had not disclosed, and sued. After limitation has set in, he applied to amend the statement of claim to plead non-disclosure of further items, including a valuable shotgun. The English Court of Appeal allowed the amendment, holding that material facts to the cause of action had been pleaded; the subsequent discovery of a further undisclosed asset was merely a further particular of the breach. Peter Gibson LJ, giving the leading judgment of the court, revisited the definition of "new cause of action" laid down in *Letang v Cooper*, and held as follows:

> 30. As I see it, the exercise which is required is the comparison of the pleading in its state before the proposed amendment and the pleading in its amended state. I do not think that it assists to look at the endorsement on the writ (see *Steamship Mutual* at p. 97 per May L.J.). What must be examined is the pleading of the essential facts which need to be proved. To define the cause of action the non-essential facts must be left out of account as mere instances or particulars of essential facts. That is what I understand Millett L.J. [*in Paragon Finance*] to have meant by stating that the selection of material facts must be made at the highest level of abstraction. Thus, to take the example provided by the facts in *Letang v Cooper* [1965] 1 QB 232 discussed by Millett L.J. at p. 405, the facts material to be proved to constitute the cause of action for trespass to the person did not include whether the trespass was intentional or unintentional.

47 In the light of these legal principles, it was apparent to us that the Judge's definition of what constitutes a "cause of action" was erroneous. He defined the term to mean the "relief or remedy" and not the "underlying facts". He said:

> 121 … [A] plaintiff clearly puts forward a new cause of action when its amendment seeks a relief or remedy which carries a different label from that which is sought in its unamended pleading. That is so even if the new relief or remedy is claimed based on the same underlying facts. …

48 In our judgment, the Judge was wrong to have focused on the label given to the pleaded set of facts. The Judge referred to the High Court decision of *Multi-Pak Singapore Pte Ltd (in receivership) v Intraco Ltd and others* [1992] 2 SLR(R) 382 ("*Multi-Pak (HC)*") in support of the proposition he arrived at. With respect, *Multi-Pak (HC)* did not quite stand for such a proposition. It was clear from *Multi-Pak (HC)* that Selvam JC (as he then was) took a fact-centric approach towards construing a "cause of action":

> 29 A cause of action "has been defined as the facts which the plaintiff must prove in order to get a decision in his favour. This definition stresses the factual aspect of the claim; namely, all material facts the plaintiff must establish. …
>
> …
>
> 32 On the basis of the analysis therefore, if all the material facts have been pleaded to constitute a cause of action in the factual sense of the term, the plaintiff will be allowed under O 20 r 5(5) to amend his statement of claim to add a cause of action in the historical sense by pleading an additional or alternate relief or remedy.

49 It was because the plaintiff in *Multi-Pak (HC)* failed to plead the additional facts it was seeking to introduce that led to Selvam JC's finding that O 20 r 5(5) did not avail to the plaintiff. In that case, the plaintiff claimed monies against the defendant on the basis of a resulting trust. After limitation had set in, the plaintiff filed voluntary particulars alleging that the defendant received the monies with actual or constructive knowledge that such payment was a

misapplication of the plaintiff's assets and was liable as a constructive trustee of the said money. Selvam JC disallowed the plaintiff's application for an order of voluntary particulars on the basis that no factual circumstance was pleaded in connection with the constructive trust claim, and that the factual circumstance in support of the constructive trust claim was very different from that relating to a resulting trust (at [35] and [36]). The result was upheld by the Court of Appeal in *Multi-Pak Singapore Pte Ltd (in receivership) v Intraco Ltd* [1993] 1 SLR(R) 220.

50 Notwithstanding the clear *ratio* of the case, some confusion may have arisen from some parts of Selvam JC's analysis. Selvam JC said at [30] that the term could also mean the "legal basis which entitles the plaintiff to succeed" and at [31] he said "Order 20 r 5(5) therefore uses the term in the historical sense to refer to the relief or remedy which the plaintiff seeks". These two statements might have given the Judge the impression that the focus should be on the relief or remedy the claimant was seeking. Insofar as these statements have been interpreted to mean that, with respect, we do not think they are accurate and should not be followed given the weight of authority against any definition of the term that focuses on the label given to the facts as opposed to the facts that support the claim.

51 With these principles in mind, we turn now to the facts of the present appeal.

The present facts

52 Applying these principles to the facts before us, we were satisfied that insofar as Geocon in the alternative claimed entitlement on the "lump sum"

basis[6] instead of the reimbursement basis, they were not new causes of action. While reimbursement and "lump sum" were different reliefs sought, they arose from different legal characterisations of the same underlying facts. No additional factual material was required to advance the alternative claims. Indeed, at the hearing of this appeal, counsel for Multistar, Mr Govind Asokan ("Mr Asokan") was unable to point to any additional facts that underlie the alternative claims.

53 A slightly different analysis however applied to the first set of amendments. As was apparent from a side-by-side comparison of the Original SOC and the Amended SOC (see [18] and [19] above), the Respondent made them evidently with the intention of including in the Original SOC the factual premise that pertained to the First Stage of works, *ie*, works done from October 2002 to April 2004 at the ECP South Location. Only the facts relating to the Second Stage of works, *ie*, works done after April 2004 at the remaining locations appeared to have been pleaded in the Original SOC – at least in express terms. Mr Leo, on behalf of Geocon, initially tried to persuade us that the two set of facts were the same or substantially the same. We disagreed. The factual material in the former category was eminently different from that of the latter – it pertained to a *different location* and a *different time frame*. This is so notwithstanding the same label of relief attached to both claims, *ie*, a reimbursement claim. All the cases cited above expressed the same conviction on this matter – the focus is on the factual material and not the label. The First Stage of works would have entitled the Respondent to claim against the Appellant an entirely separate sum of monies and would have required the Appellant to investigate a new set of facts.

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[6] 2 ACB, p 204, para 40.

54 Indeed, the Judge agreed that the amendments sought to add new factual material into the Original SOC. It was only because he applied an erroneous test that led him to conclude that these new facts did not amount to a new cause of action. In his GD, the Judge focused on the label of the relief rather than the factual premises. He said:

> 128 … [T]hese amendments simply insert by amendment additional factual material into the [SOC] as support for Geocon's existing cause of action on the reimbursement basis. …
>
> 147 The amendments relating to Geocon's original claim on the reimbursement basis plead only two new facts. The first is that Resource Piling stopped work in late 2002 at the ECP South Location. The second is that Mr Tan gave the evidence in the 2004 Litigation which is set out in paragraph 54 of his 2005 affidavit. …

55 We reiterate the reasons why the Judge was wrong in this regard at [47]–[50] above. On the face of it, and based on the written submissions tendered for the appeal, the amendments did suggest to us that Geocon was seeking to introduce a new cause of action.

56 At the hearing of the appeal, we highlighted our concerns to counsel for Geocon, Mr Leo, and informed him that, in light of the backdrop of legal principles we have discussed, his case hinged upon him identifying in the Original SOC factual material relating to the First Stage. It was only then that he directed our attention to the particulars contained in Annexure A that was appended to the Original SOC. Paragraph 37 of the Original SOC made reference to this annexure, which contained a long list of works done by the Respondent and the corresponding cost incurred for each item of works. Amongst the many items, reference was made to works done by Geocon from

November 2002 to April 2004.[7] The Original SOC was by no means a model of clarity in that the pleadings pertaining to the First Stage of the works should have been expressed in clearer language in the main text of the Original SOC instead of merely listing the particulars of works done in the annexure. That notwithstanding, for the purposes of O 20 r 5(5), we were satisfied that the facts in relation to the First Stage of the works were sufficiently pleaded in that it had given notice to the Appellant of the Respondent's intention of claiming payment for work done in that respect. In these circumstances, we found that the first set of amendments did not introduce a new cause of action.

57 Since Multistar had failed to satisfy us on the first question stated at [30] above, namely, the amendments introduced a new cause of action, we need not concern ourselves with the remaining three questions given rise to by O 20 r 5(2) read with r 5(5). It also followed from this that Multistar did not have the right to appeal against the Judge's decision by reason of paragraph (g) of the Fourth Schedule to the SCJA. The decision was non-appealable. In any event, even if Multistar had a right of appeal, the appeal would have had no chance of succeeding in light of O 20 r 5(2) read with r 5(5).

Observations on the legislative framework of O 20 r 5

58 Before we conclude, we make a brief observation about the way in which the Judge dealt with the question as to how amendment to pleadings should be approached. It was apparent from the GD that he considered the amendment application as a routine application made under the rubric of O 20 r 5(1) even though Multistar had a reasonably arguable case that the limitation period in respect of the alleged new cause of action introduced by way of the

[7] ROA, Vol. 2, p 27.

amendment has expired (see [134]–[135] of the GD, applying *Welsh Development Agency v Redpath Dorman Long Ltd* [1994] 1 WLR 1409 at 1425H; see also *Ballinger and another v Mercer Ltd and another* [2014] 1 WLR 3597 at [24]). He found that the amendments occasioned no prejudice to Multistar that could not be rectified by an award of costs. When Multistar wrote in requesting that it be accorded an opportunity to make further submission in relation to O 20 r 5(2) on the ground that this provision should govern an amendment application where the applicable limitation period has expired, the Judge declined the request.

59 On appeal, one of the arguments Mr Leo ran on behalf of Geocon was that the Judge was correct in disposing of the application under O 20 r 5(1), and on that basis, he was also correct in finding that Geocon's amendments did not prejudice Multistar.[8] We disagreed. In our opinion, the Judge should have heard the parties on the merits of O 20 r 5(2) read with r 5(5). He declined to hear further arguments because he did not think the proposed amendments raised a new cause of action (see [108] and [131] of the GD). While we have in [56] come to the same view as he did, that no new cause of action was raised by the amendments, this was on account of the particulars set out in the annexure to the Original SOC and not for the reasons he gave. On the basis of Judge's discussion of the Original SOC and to the extent that he approached the application for amendments looking only at O 20 r 5(1), he had erred. O 20 r 5(1) gives the court a wide discretion to allow an amendment application if the defendant suffers no prejudice that cannot be rectified by a cost award (see *Digilandmall* at [86] and *Wright Norman and another v OCBC Ltd* [1993] 3 SLR(R) 640 at [6]).

[8] Respondent's case at paras 64-68.

60 The common forms of prejudice suffered by the defendant would be of him being deprived of an opportunity to cross-examine witnesses on the unpleaded facts or to lead evidence to disprove such facts (see *V Nitha v Buthamanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 at [37]; *Sheagar s/o T M Veloo v Belfield International (Hong Kong) Ltd* [2014] 3 SLR 524 at [118]; and *Digilandmall* at [86]). The significance of these considerations diminishes where the proposed amendments raise a claim in the circumstances where limitation has allegedly set in and which in turn gives rise to a different form of prejudice. The prejudice to the defendant in this situation is that he is deprived of his right to raise the limitation defence, which costs alone cannot remedy. This provides a plausible explanation as to why a different legislative regime is in place to deal with amendment applications which involved the defence of limitation – thus the provisions in O 20 r 5(2), (3), (4) and (5). The opening words of O 20 r 5(1) clearly prescribe this and we now quote the rule:

> **5.**—(1) *Subject to* Order 15, Rules 6, 6A, 7 and 8 and *this Rule*, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.
>
> [emphasis added]

61 The effect of the phrase "subject to … this Rule" is that the court no longer has the power and discretion to allow an amendment under O 20 r 5(1) if the proposed amendment engages O 20 r 5(2). O 20 r 5(2) is engaged if, in relation to the proposed amended claim, limitation at that point in time has set in.

62 The question of whether the court still has a residual discretion under O 20 r 5(1) to allow an amendment that does not fit within the four corners of O 20 r 5(2)–(5) was an issue which troubled the English courts. There was a time when the English courts thought that the enactment of the RSC gave courts a

wide discretion to grant an amendment notwithstanding that the statutory period had run out. In *Chatsworth Investments Ltd v Cussins (Contractors) Ltd* [1969] 1 WLR 1 ("*Chatsworth*"), Lord Denning pronounced that the then newly-enacted RSC O 20 r 5(1) gave the court wide powers to permit an amendment which would otherwise have been barred under O 20 r 5(2). He said (at 5):

> … Mr. MacCrindle submitted that the court has power under the new Rules of the Supreme Court to permit an amendment, even though it does deprive the defendant of a defence under the Statute of Limitations. In this I think he is right. Ord. 20, r. 5 (1) is wide enough to permit it. It enables us to amend on such terms "as may be just." The courts in former times fettered themselves by the rule of practice in *Weldon v. Neal*, which was applied rigidly and strictly. Any amendment was disallowed if it would deprive the defendant of a defence under the Statutes of Limitation. But that rule of practice was found to work injustice in many cases. The new Rule of Court in Ord. 20, r. 5 (2), (3), (4) and (5), has specifically overruled a series of cases which worked injustice. Since the new rule, I think we should discard the strict rule of practice in *Weldon v. Neal. The courts should give Ord. 20, r. 5 (1) its full width. They should allow an amendment whenever it is just so to do, even though it may deprive the defendant of a defence under the Statute of Limitations.* …
>
> [emphasis added]

63 In *Sterman v E.W. & W.J. Moore* [1970] 1 QB 596, Lord Denning once again took the opportunity to affirm the earlier comments he made in *Chatsworth*. He disagreed with an English Court of Appeal decision of *Braniff v Holland & Hannen and Cubitts (Southern) Ltd* [1969] 1 WLR 1533, a decision delivered shortly after *Chatsworth* in which Widgery LJ doubted Lord Denning's interpretation of O 20 r 5, and reiterated that O 20 r 5(2)–(5) should not cut down the court's wide powers contained in O 20 r 5(1) at 604:

> I think we should give full effect to the wide words of Ord. 20 r. 5(1). We should not cut them down by reference to subrules (2), (3), (4) and (5). I adhere to the view I expressed in [*Chatsworth*] …

64 The debate continued in *Brickfield Properties Ltd v Newton* [1971] 1 WLR 862. Sachs LJ, who sat on the same coram as Lord Denning in *Chatsworth*, lent support to Lord Denning's approach. He observed that the court, despite the expiry of the applicable limitation period, has jurisdiction under both O 20 r 5(1) and r 5(5) to allow the amendment (at 873). Between the approaches advocated in *Barniff* and *Chatsworth*, he preferred the latter (at 874). He said (at 875-6):

> There is no doubt that [the rule]... despite [the] unhappy wording [of the term "subject to" in O 20 r 5(1)], intended to convey some such meaning as "taking into account the following provisions of this rule". Technically, it would, of course, have been better to use some phrase making it clear that sub-rules (2), (3), (4) and (5) of Ord. 20, r. 5, were intended to operate without prejudice to the generality of sub-rule (1), for that was what was meant. ...

65 Sachs LJ's views however did not find favour with the other members of the coram. Edmund Davies LJ said that, where the operation of a limitation statute is involved, the matter ends when the applicant cannot bring himself within the four corners of O 20 r 5(5). Sachs LJ's construction would be tantamount to treating the opening words of O 20 r 5(1) (*ie*, "subject to the following provisions of this rule") as not being there at all, and having been inserted by the legislature, they must have intended to fulfil some purpose (at 879). Cross LJ too held that Sachs LJ's construction would put great strain on the language used in O 20 r 5(1).

66 In our judgment, we were in complete agreement with the observations made by Davies and Cross LJJ. O 20 r 5(1) does not give the court an unfettered discretion. It was plain to us that the term "subject to … this Rule" signalled the draftsman's intent for O 20 r 5(2)–(5) to cut down the scope of the general discretion under O 20 r 5(1) in circumstances where limitation has set in. The approach advocated by Lord Denning and Sachs LJ is, in our view, wrong

because it would render this phrase meaningless. There is no reason why effect should not be given to the ordinary meaning of this phrase, and certainly no reason for us to give it a completely different meaning as to suggest that O 20 r 5(2)–(5) were intended to operate without prejudice to the generality of O 20 r 5(1).

67 This interpretation also makes sense when understood in light of the history of the provision. Any other conclusion would render it meaningless for the draftsman to have added O 20 r 5(2)–(5) to O 20 r 5(1) which existed long before the 1965 legislative amendments, albeit in a slightly different form (see The Rules of the Supreme Court 1883 (UK), O 28 r 1). It would be incongruous for the draftsman to prescribe parameters under O 20 r 5(2)–(5), within which the court may allow an amendment notwithstanding the expiry of the limitation period, only to leave the court with a discretion-at-large to allow amendments under O 20 r 5(1) even if they fail to meet the requirements prescribed. In this regard, we found Staughton LJ's analysis to be insightful (see *The Casper Trader* at 137):

> A second change was made soon afterwards [in 1965], when paras (2) to (5) were added [to O 20 r 5(1) of the RSC]. Paragraphs (3) and (4) deal with correcting the name of a party and altering the capacity in which a party sues or is sued. What was the effect of this second change? Manifestly it was not intended to change the prevailing practice under para (1), so far as concerned amendments which were not of the kind referred to in paras (3), (4) and (5). But where the amendments are of that kind, and the relevant period of limitation has expired, in my judgment they are to be dealt with only under para (2) and not under para (1). I am afraid that I do not agree with the contrary view, adopted by Sachs LJ in the *Brickfield Properties* case, but doubted by Edmund Davies and Cross LJJ. The editors of The Supreme Court Practice 1991 vol 1, para 20/5–8/7 share my view, and find support for it in s 35(2) of the Limitation Act 1980.

68 Given the linguistic and historical difficulties in the approach suggested by Lord Denning and Sachs LJ, we respectfully declined to follow it. Indeed, slightly more than two decades ago, this court chose not to follow *Chatsworth* in *Lim Yong Swan* for similar reasons:

> 23 We regret that we were unable to agree with those learned opinions in view of the express words of O 20 r 5(1) which subjected the power to amend contained therein to the other provisions of the rule. These together with the history prior to the new paragraphs clearly indicated that the scope of the permissible amendments had been enlarged but also that the discretion of the court was not at large. …

69 In sum, on the facts as the Judge had determined to be relevant, we found that he had erred in treating Geocon's application in relation to the first set of amendments as a routine one to be dealt with under O 20 r 5(1). It should have been under O 20 r 5(5). However, in the light of what was found to be set out in the annexure to the Original SOC (see [56] above), we held that, and for that reason alone, the first set of amendments also did not introduce a new cause of action. The claim was there all along; just an instance of bad drafting. It was only on this basis that the first set of amendments should have been allowed under O 20 r 5(1).

Conclusion

70 For the above reasons stated, we dismissed the appeal with the usual consequential orders. We also reserved the costs of this appeal to the trial judge.

Sundaresh Menon	Chao Hick Tin	Andrew Phang Boon Leong
Chief Justice	Judge of Appeal	Judge of Appeal

Govind Asokan (Gabriel Law Corporation) for the appellant;
Leo Cheng Suan and Teh Ee-Von (Infinitus Law Corporation) for the respondent.
