

**IN THE FEDERAL COURT OF THE REPUBLIC OF SINGAPORE**

**[1968] SGFC 5**

CA Y1/1968

Between

Wong William

*... Appellant*

And

Tan Yong Chim

*... Respondent*

---

**GROUND OF DECISION**

---

Civil Procedure — Amendments

**This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.**

## **Wong William v Tan Yong Chim**

**[1968] SGFC 5**

CA Y1/1968

Chua F A J; Tan Ah Tah FJ; A V Winslow J

06 June 1968

1 A study of the history of the proceedings in this action until the making of the orders by Buttrose J in chambers on 6 December 1967 in SC No 2487/67 and SC No 2375/67 respectively, now under appeal, reveals a state of indecision and confusion on the part of the plaintiff/respondent and/or his advisers as to the identity of the party or parties who should have been sued by him in the first instance.

2 A specially indorsed writ in this action was issued on 26 October 1966 to `Winsen Steamship Co SA a limited liability company incorporated in Panama and carrying on business at Room 11, New Henry House, 10, Ice House Street, Hongkong` (hereinafter referred to as the limited company) claiming a sum of (M) \$18,208.08, with interest, for breach of contract arising from a short delivery of 121 bags of coffee beans which ought to have been delivered to the plaintiff from the SS

3 Winley which arrived in Singapore on 30 December 1965 from Hongkong.

4 Before issuing this writ, however, it became necessary for the plaintiff, through his solicitors, to ascertain the name and address of the owners of this vessel at the material time so that the writ could be addressed to the correct defendant. In answer to an inquiry, therefore, Messrs Drew & Napier, as solicitors for the agents of the owners, on 19 August 1966 informed the plaintiff's solicitors that the owners were the limited company. This writ was issued to the limited company accordingly.

5 It then became necessary to have the writ served out of the jurisdiction and the plaintiff's solicitors instructed Messrs Wilkinson & Grist in Hongkong to attend to the service of the said writ which the Sheriff of Singapore had sent to the Registrar, Supreme Court, Hongkong for service on the party named in the writ as the defendant as stated earlier.

6 On 10 January 1967 Messrs Wilkinson & Grist replied to the plaintiff's solicitors to the effect that a search at the Registry of Companies in Hongkong showed that no record could be traced there of the limited company which, as a company incorporated abroad, was required by their Companies Ordinance, if it had a place of business there, to file certain particulars with the registry, including the names and addresses of one or more persons, resident in Hongkong, authorised to accept service on that company's behalf. They, however, pointed out that a search at the Business Registration Office in Hongkong disclosed that, on 14 April 1965 a business known as Winsen Steamship Co SA with the same address as that shown on the writ addressed to the limited company was registered as a partnership in the names of William Wong and Lim Tow Say and they asked for further instructions with regard to the manner in which service should be effected upon the company. It would be easy for us to serve Mr Wong as a partner or alternatively to serve the person having the apparent management and control of the firm at its business address.

However, this may not be sufficient for you if you wish to take proceedings against the incorporated company in Singapore`.

7 On 27 February 1967 the plaintiff obtained leave to amend the writ by addressing it to Winsen Steamship Co SA (sued as a firm) at the same address, no doubt in the belief that Messrs Drew & Napier had made a mistake as to the identity of the owners of the vessel concerned. It is significant however that no attempt was made to verify from Messrs Drew & Napier what the true position was.

8 On objection being taken to the new form of the writ and to the fact that the new defendants, being a foreign firm not carrying on business within the jurisdiction, could not be sued as a firm, the plaintiff successfully applied on 22 May 1967 for leave to amend the writ again by showing 1 William Wong and 2 Lim Tow Say trading as Winsen Steamship Co SA as the defendants.

9 On 20 March 1967 a conditional appearance was entered by William Wong.

10 On 9 October 1967 the defence was filed on behalf of the two partners trading as a firm.

11 On 24 October 1967 in SC No 2375/67 the first defendant, William Wong, applied to have the writ and all subsequent proceedings struck out on the ground that the two partners were never the owners of the SS Winley .

12 On 7 November 1967 in SC No 2487/67 the plaintiff applied for the writ and all subsequent proceedings to be further re-amended to the form in which it originally was on 26 October 1966, i.e., showing the limited company as the

defendant. The plaintiff also applied for service of the writ and the statement of claim as so amended to be dispensed with and for the appearance entered by William Wong on 20 March 1967 to stand as a good and valid appearance.

13 Both these summonses-in-chambers came before Buttrose J on 6 December 1967 who dismissed the first defendant's application in SC No 2375/67, with costs, and granted the plaintiff's application in SC No 2487/67, restoring, in effect, the status quo as it stood on the original writ, dispensing with service on the limited company and ordering that the appearance entered by William Wong on 20 March 1967 should stand as a good and valid appearance for the limited company.

14 The first defendant, William Wong, has now appealed against both these decisions.

15 The first observation to be made on this appeal is that it is an appeal against two separate decisions in chambers although they were made on the same day.

16 M Buttrose J heard SC No 2487/67 first. This was the plaintiff's application for leave to re-amend which he granted after hearing counsel for both parties. Having granted this application, he dismissed William Wong's application in SC No 2376/67, to strike out the writ and all subsequent proceedings, without any further argument, as he must have considered that this followed from his earlier decision to grant the plaintiff's application to re-amend.

17 The grounds of appeal against both decisions, which can be dealt with together in view of their mutual dependency, are set out as follows:

*1 With regard to both summonses-in-chambers, that the learned judge should not*

(a) have allowed the addition of a new defendant to the proceedings, namely, the limited company known as Winsen Steamship Co SA, when the claim against such new defendant was barred by the one-year limitation period provided in the bill of lading and incorporated legislation. The learned judge should accordingly have granted the defendant's application made by summons No 2375 and dismissed the plaintiff's application in summons No 2487;

(b) have ordered the costs of the first defendant's summons No 2375 to be taxed and paid by the defendant when the plaintiff admits he has no valid claim against the first defendant, nor have ordered the costs of the plaintiff's summons No 2487 to be in the cause when the plaintiff himself was applying to amend.

*2 With regard to the plaintiff's summons No 2487, the learned judge should not have ordered the appearance entered on 20 March 1967 by the first defendant personally to stand as an appearance for the limited company.*

18 With regard to ground 1 (a), it seems to me that the sole question for determination is whether the amendment granted whereby the limited company became the new defendant, constituted the mere correction of a misnomer or whether it involved the addition or substitution of a new defendant. On this question a number of cases were cited which this court considered in **Colgate-Palmolive (Asia) v Swedish East Asia Co** [1965-1968] SLR 154. In that case this court applied the test laid down by Devlin LJ in **Davies v Elsby Brothers** [1960] 3 All ER 675, CA in deciding whether a misnomer has taken place or not in the name of the writ. The test to be applied is: How would a reasonable person receiving the writ take it? If, in all the circumstances of the case and looking at the writ and statement of claim indorsed thereon as a whole, he would say to himself: 'Of course it must mean me, but they have got my name wong', then there is a case of mere misnomer which can be corrected. In the present appeal, Winsen Steamship Co SA (sued as a firm) were served in Hongkong

and the question arises whether when service was effected on the firm as defendants at the same address as the limited company, the recipient of the writ must have said to himself: 'Of course it means the limited company'.

19 It should be remembered that two separate and distinct legal entities were carrying on business at Room No 11, New Henry House, 10, Ice House Street, Hongkong. One was the firm and the other the limited company, both bearing the same name. William Wong was the managing partner of the firm as well as president of the limited company. The owners of the SS **Winley** were the limited company. The solicitors for the Singapore agents of the owners, Messrs Drew & Napier, had indicated to the plaintiff in clear and unequivocal terms that the owners were the limited company. They must have been acting on information and instructions which no doubt reached the Singapore agents from Room No 11 and it is almost certain that it was either William Wong or someone on his behalf who supplied this information unless the Singapore agents already knew who the owners were. The question therefore is whether William Wong or someone in Room No 11 when served with the writ addressed to the firm would, as a reasonable person, have had no doubt in his mind that it was the limited company whom the plaintiff intended to sue and that he had simply got the name wrong. (See Donovan LJ in **Whittam v WJ Daniel & Co** [1962] 1 QB 271).

20 In my judgment, a reasonable person would have had some doubt as to the identity of the party whom the plaintiff intended to sue. I do not think that he would have been convinced that the limited company was intended. The firm and the limited company were both in existence and the writ was addressed to the firm. A reasonable man receiving the writ would justifiably have said to himself, 'Despite the fact that the SS Winley is owned by the limited company and despite the fact that this information has been given to the plaintiff, for some

reason unknown to me, he insists on suing the firm. Therefor the firm is clearly the intended defendant`.

21 It was submitted by counsel for the plaintiff that the defendant`s lack of bona fides was apparent from the running of two businesses, that of the firm and that of the limited company, under the same name and at one and the same address in circumstances obviously designed to mislead the public, particularly where the initials `SA`, which indicate that a concern is a limited company, are used to describe a partnership. The coincidence of the names is indeed a curious fact and one that the Registrar of Business Names in Hongkong may wish to consider. Whatever deception (if any) was intended, however, does not affect the bona fides of the defendant as revealed by the correspondence, in my view, because full disclosure was made to the plaintiff in August 1967 that it was the limited company which owned the SS Winley .

22 I do not think that William Wong could have anticipated that the plaintiff and/or his solicitors would, in defiance of the clear information given to them, sue the wrong entity nor can I credit him with the fiendish foresight required to anticipate that this would happen.

23 I have therefore come to the conclusion that the further re-amendment allowed by M Buttrose J in SC No 2487/67 involved the substitution of a new defendant. It is to be borne in mind that, by 6 December 1967 the claim had become time-barred by article 3 r 6 of the Hague Rules which provides a one year limitation period, and that any such substitution would have deprived the new defendant of the benefit of the time-limit imposed. Counsel for the plaintiff/respondent, however, did not admit the limitation period of one year under the Hague Rules. From the notes of argument recorded by M Buttrose J the limitation point was certainly taken by counsel for the defendant/appellant

before him and the **Colgate-Palmolive** case, which is remarkably like the present one, was cited in support of the defendant's contention. It does not appear that counsel for the plaintiff disputed the one year limitation period though he does so now.

24 In the result, ground 1 (a) of the appeal succeeds. Ground 1 (b) relates to costs ordered by the judge and is dealt with later in connection with costs.

25 With regard to ground 2, it follows that the order in SC No 2487/67 that the conditional appearance entered by the first defendant personally on 20 March 1967 should stand as an appearance for the limited company, automatically falls to the ground. In any case, even if I had decided that this was a case of misnomer and not the substitution of a new defendant, I fail to see how a conditional appearance entered by the first defendant can be allowed to stand as an appearance for the limited company when the limited company has never been served at all. In the circumstances of this case, I think it was wrong to dispense with such service.

26 It further seems to me that, on the merits, the plaintiff has only himself to blame. One blunder after another has been committed in the course of these proceedings which could easily have been avoided if pains had been taken to check Lloyd's register as to ownership of the SS Winleyor to communicate with the solicitors for the defendants as to the accuracy of the information supplied by them as to such ownership after the plaintiff's solicitors had heard from Messrs Wilkinson & Grist in Hongkong.

27 The appeal is allowed in respect of both orders with costs both here and below.

28 The orders made in chambers are accordingly set aside.

29 The writ and all subsequent proceedings are struck out and the appellant will have the costs of the action.

30 ***Appeal allowed.***

Chua F A J  
Tan Ah Tah FJ  
A V Winslow J

J Grimberg (Drew & Napier) for the appellant  
AP Godwin and Ng Wing Cheong (Ng & Ng) for the respondent

---