IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1992] SGHC 18

DC 5319/1991, S/S No 11392 of 1991

Between

PacPress Media Private Limited

… Plaintiff

And

House Of Publishing Pte Ltd

… Defendant

GROUNDS OF DECISION

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

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PacPress Media Private Limited v House Of Publishing Pte Ltd

[1992] SGHC 18

DC 5319/1991, S/S No 11392 of 1991
S Rajendran J
31 January 1992

1 **JUDGMENT:**

2 1. This is an appeal by the plaintiffs against an order of a district judge granting the defendants unconditional leave to defend.

3 2. Counsel for the defendants raised a preliminary objection that the plaintiffs have brought this appeal without having obtained leave from the district judge as required under O 55 r 2 of the Subordinate Courts Rules 1986. The rule reads as follows:

4 There shall be no appeal from a Judge in any interlocutory application except with the leave of the Judge.

5 Counsel submitted that an application for summary judgment was an interlocutory application and as O 55 r 2 has not been complied with this appeal ought to be dismissed. Counsel told the court that from enquiries she has made she has ascertained that it was common practice in such cases to obtain leave to appeal.

6 3. Applications for summary judgment in the Subordinate Courts are governed by O 14 of the Subordinate Courts Rules 1986 and not O 55 of the said Rules. Rule 12(1) of O 14 provides as follows:

7 An appeal shall lie to a Judge of the High Court in Chambers from any judgment, order or decision of the Court made in pursuance of this Order.

8 In my view the specific provisions of O 14 r 12 providing for appeals in O 14 applications should prevail over the general provisions of O 55 r 2.

9 4. In any event the provisions of O 14 r 12 accords with the provisions of s 21 of the Supreme Court of Judicature Act. Section 21(1) of the Supreme Court of Judicature Act, provides as follows:

10 (1) Subject to the provisions of this or any other written law, an appeal shall lie to the High Court from a decision of a District Court or Magistrate's Court in any suit or action for the recovery of immovable property or in any civil cause or matter where the amount in dispute or the value of the subject matter exceeds $2,000 or with the leave of the High Court if under that amount. In requiring leave of the judge before there can be any appeal from the decision of the judge, O 55 r 2 is inconsistent with s 21 of the Supreme Court of Judicature Act.

11 5. In Goh Siam Yong v Zacharia Norman Augustine & Anor < 1989 > 3 MLJ 406, a similar question arose with regard to the provision in O 55 r 1(5) of the Subordinate Courts Rules that the decision of the judge in chambers under O 55 was final. In holding that O 55 r 1(5) was ultra vires the Subordinate Courts Act, Chan Sek Keong J said:

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

12 In my view, s 47 of the Subordinate Courts Act cannot justify the validity of O 55 r 1(5). That section provides for the making of rules of court to regulate and prescribe the procedure on appeals to the High Court. It does not authorize the making of rules of court which deny, simpliciter, such right of appeal. The statutory provision conferring the right of appeal to the High Court is not found in the Subordinate Courts Act but in s 21 of the Supreme Court of Judicature Act. It should be noted that s 21 makes no distinction between an interlocutory judgment or a final judgment, whether obtained in an interlocutory application or at the trial of an action. Accordingly, O 55 r 1(5) is ultra vires the Subordinate Courts Act.

13 I agree with the views expressed by Chan Sek Keong J in the above case. Although O 55 r 2 does not deny, simpliciter, the right of appeal, nevertheless by requiring that leave to appeal be obtained from the judge, O 55 r 2 puts a fetter on that right. Such a fetter is inconsistent with s 21 of the Supreme Court of Judicature Act and accordingly O 55 r 2 is, in my view, ultra vires the Subordinate Courts Act.

14 6. For the above reasons, I reject the preliminary objection raised by counsel for the defendants and now turn to consider the appeal on its merits.

15 7. The plaintiffs were engaged by the defendants to print a magazine called 'Bohemian'. Four invoices rendered by the plaintiffs to the defendants for printing the January, February, March and April 1991 issues remained unpaid and the plaintiffs commenced proceedings in the Subordinate Courts against the defendants for the sum of $28,825 being the total of the said invoices. The defendants, in a defence and counterclaim filed on 28 August 1991, admitted the claim but counterclaimed for a sum of $23,950 said to be the cost of the

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

unused paper and colour separation films supplied by the defendants which the plaintiffs had refused to return and damages for the wrongful retention.

16 8. The plaintiffs, on 13 September 1991, applied under O 14 of the Subordinate Courts Rules for summary judgment. In an affidavit filed on 28 October 1991 Idy Ong an assistant general manager employed by the defendants stated that the plaintiffs had, despite repeated reminders, refused to return the unused reams of paper and colour separation films and that as a consequence the defendants suffered loss to a value of $23,900. In addition, Idy Ong raised two new claims not covered in the counterclaim that had been filed, namely:

17 (a) that the plaintiffs had in breach of contract delivered Volume 17 of the Bohemian on 13 June 1991 and not on 10 June 1991 as required and had thereby caused the defendants loss. The loss was said to arise from the fact that two advertisers had refused to pay the defendants' invoices (totalling $4,000) because of the late publication.

18 (b) that Volume 17 of the magazine was printed in a haphazard manner in that a lining had appeared on a men's wear advertisement as a result of which the advertiser had refused to settle the defendants' invoice. It was alleged that to appease the advertiser the defendants had to provide 'free advertisement and editorial support up to the region of $6,500'.

19 Totalling up these sums Idy Ong claimed that the defendants had a counterclaim against the plaintiffs for a sum of $34,400 and general damages.

20 9. From the correspondence exhibited by the plaintiffs it is clear that the plaintiffs were and are willing to hand over the unused paper and the colour separation films as soon as their invoices are paid. Although the defendants

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

have, in the defence filed, admitted the plaintiffs' claims they have, instead of settling these claims and obtaining the unused paper and colour separation films, elected to counterclaim for what is said to be the value of these items and rely on the counterclaim to resist the plaintiffs' application for summary judgment. This appears to me to be an abuse of process.

21 10. As for the two new claims raised by the defendants, no particulars have been provided to back up these claims, In respect of the failure to deliver Volume 17 on 10 June 1991, no details have been provided as to why such failure would constitute a breach of contract. The letter exhibited in the affidavit of Idy Ong to support this claim is no more than an assertion by the plaintiffs that as the defendants had approved the last section of the Bohemian Magazine No 17 on 5 June 1991, the plaintiffs had to deliver the finished product five days after that date. Such a unilateral assertion is insufficient by itself to show even prima facie that in delivering the magazine on 13 June 1991 the plaintiffs were in breach of contract. Again, apart from asserting that the delay in the delivery had resulted in two (named) advertisers refusing to pay the defendants' invoice, the defendants produced no documentary evidence in support of the assertion. Similarly, no particulars were provided on the alleged loss arising from the line appearing on the men's wear advertisement. On the copy of the advertisement annexed to the affidavit of Idy Ong, no line was discernible. At the hearing counsel produced a copy of the magazine to point out the offending line. The 'line' which appeared on the right-hand edge of the advertisement was so inconspicuous that it was not surprising, as counsel for the plaintiffs pointed out, that the defendants themselves had not spotted the line on 5 June 1991 when the defendants approved the proof for publication.

22 11. Counsel for the defendants referred me to the judgment in Avery-Laurence (S'pore) Pte Ltd v Electrical Enterprises < 1972 > 2 MLJ 182 and to

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

passages from the White Book to establish the proposition that where the defence sets up a bona fide counterclaim arising out of the same subject matter of the action unconditional leave to defend should be granted. I fully accept the principles stated in that case and in the passages in the White Book referred to. But the question now at issue is whether the counterclaim in this case can be said to be a bona fide one. On the particulars, or rather the lack of particulars, of the counterclaim provided by the defendants in this case, I am unable to say that the counterclaim is prima facie a bona fide one.

23 12. In the circumstances I allow this appeal, set aside the order of the district judge giving the defendants unconditional leave to defend and give judgment to the plaintiffs for the sum of $28,825, interest thereon at the rate of 6% per annum from the date of the writ and order the defendants to pay costs both here and below.

S Rajendran J

Joseph Chellappan (W T Woon & Co) for the plaintiffs/appellants
Yasmeen Marican (Ronny Chong & Co) for the defendants/respondents

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