IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1993] SGCA 20

CA 116/1990

Between

Drilex Systems Pte Ltd

… *Appellant*

And

Registrar of Companies
Another

… *Respondent*

GROUNDS OF DECISION

Companies — Name — Acceptable names; Companies — Name — Reservation; Words and Phrases

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Drilex Systems Pte Ltd v Registrar of Companies and Another

[1993] SGCA 20

CA 116/1990
Goh Joon Seng J; L P Thean J; Yong Pung How CJ
30 March 1993

[Please note that this case has not been edited in accordance with current Singapore Law Reports house style.]

Judgment reserved.

Goh Joon Seng J (delivering the judgment of the court):

1 This is an appeal from a decision of Chan Sek Keong J, dismissing the appellants' claim for declarations, inter alia, that 'Drilex Systems Inc' was an undesirable name and that its registration should be set aside, and an injunction restraining the second respondent from using that as its name in Singapore.

2 Drilex Systems Pte Ltd, the appellants, were incorporated and registered in Singapore on 4 October 1979. They carry on business in Singapore and Indonesia, importing and distributing communication equipment, computer related products and accessories.

3 The second respondent is a foreign company whose background requires some explanation. In 1970 a branch of a Californian corporation called the Grant Oil Tool Co was registered as a foreign company in Singapore. In 1976 its assets

and name were acquired by another Californian corporation, and the original corporation changed its name. In 1982 that original corporation was dissolved, and the Singapore branch accordingly ceased to exist as such. In 1987 the new Grant Oil Tool Co merged with two other American corporations, its subsidiaries, to form A-Z International Tool Co, a Texan corporation. Shortly afterwards this new entity changed its name to Drilex Systems Inc. Its business is in oil drilling and exploration.

4 On 30 December 1988 this new corporation registered itself in Singapore as a foreign company and filed Form 14B. However, the Registrar of Companies, not having been informed of the events set out in the preceding paragraph, assumed that the Californian corporation which had merged with its two American subsidiaries to form the new Drilex Systems Inc was the original Grant Oil Tool Co which had registered a branch in Singapore in 1970. For this reason the new corporation's registration was cancelled and an application was then made to change the name of the defunct presence in Singapore to Drilex Systems Inc.

5 This application was allowed by the Registrar of Companies on 31 March 1989 despite the appellants' complaint of the confusion generated by the second respondent's new name, on the basis that there was no reason to direct the foreign company to change its name since neither s 27 nor s 378 of the Companies Act (Cap 50, 1988 Ed)('the Act') applied. After attempts to resolve the dispute failed, the appellants filed Originating Motion No 78 of 1989, joining the registrar as first defendant and Drilex Systems Inc as second defendant, claiming the aforesaid declarations.

6 In the course of the proceedings the events which had occurred in America came to light but it was agreed that the learned judge should continue to

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determine the matter on the footing that the dissolution of the original Grant Oil Tool Co was immaterial. Drilex Systems Inc applied again to be registered as a foreign company and the application was held in abeyance pending Chan Sek Keong J's decision.

7 For convenient reference we set out here the relevant provisions of ss 27 and 378:

27(1) Except with the consent of the Minister, a company shall not be registered by a name that in the opinion of the Registrar —

(a) is undesirable;

(b) is identical to that of any other company, corporation or business name;

(c) so nearly resembles the name of another company, corporation or business name as to be likely to be mistaken for it; or

(d) is a name of a kind that the Minister has directed the Registrar not to accept for registration.

(2) Notwithstanding anything in this section and section 28, other than subsection (4) thereof, where the Registrar is satisfied that a company has been registered by a name (whether through inadvertence or otherwise and whether originally or by change of name) which —

(a) is identical to that of any other company or corporation; or

(b) so nearly resembles the name of another company or corporation as to be likely to be mistaken for it, the Registrar, may direct the first-mentioned

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company to change its name and the company shall comply with that direction within 6 weeks after the date of the direction or such longer period as the Registrar allows and if the company fails so to comply the company and its officers shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $2,000 and also to a default penalty.

…

(4) For the purpose of subsection (2), the reference to a corporation therein shall include a reference to a corporation whether or not it is registered under Division 2 of Part XI.

(5) A company aggrieved by the decision of the Registrar under subsection (2) may within 30 days of the date of the decision appeal to the Minister whose decision shall be final.

…

(10) A person may apply in the prescribed form to the Registrar for the reservation of a name set out in the application as —

(a) the name of an intended company;

(b) the name to which a company proposes to change its name; or

(c) the name under which a foreign company proposes to be registered, either originally or on change of name.

(11) A company shall not be registered under section 19(1) and the Registrar shall not approve the change of name of a company under section 28(2) unless

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the name which it is proposed to be registered or the proposed new name, as the case may be, has been reserved under subsection (12).

(12) If the Registrar is satisfied as to the bona fides of the application and that the proposed name is a name by which the intended company, company or foreign company could be registered without contravention of subsection (1), he shall reserve the proposed name for a period of two months from the date of the lodging of the application.

(13) If, at any time during a period for which a name is reserved, application is made to the Registrar for an extension of that period and the Registrar is satisfied as to the bona fides of the application, he may extend that period for a further period of two months.

(14) During a period for which a name is reserved, no company or foreign company (other than the intended company, company or foreign company in respect of which the name is reserved) shall be registered under this Act, whether originally or on change of name, under the reserved name or under any other name that, in the opinion of the Registrar, so closely resembles the reserved name as to be likely to be mistaken for that name.

(15) The reservation of a name under this section in respect of an intended company, company or foreign company does not in itself entitle the intended company, company or foreign company to be registered by that name, either originally or on change of name.

378(1) Except with the consent of the Minister, a foreign company shall not be registered by a name that, in the opinion of the Registrar, is undesirable or is a

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name, or a name of a kind, that the Minister has directed the Registrar not to accept for registration.

8 It will immediately be obvious that under s 378 the registrar will refuse to register a company's name only if the registrar is of the opinion that such name is undesirable or is a name, or a name of a kind, that the Minister has directed the registrar not to accept for registration, whereas under s 27(1), there are two additional grounds for such refusal, namely, that the name proposed is identical or confusingly similar to the name of another company, corporation or business name.

9 Prior to 1984 the reasons for which the registrar would refuse to allow a particular name were the same for both local and foreign companies: the name was undesirable or was a name, or a name of a kind, that the Minister had directed the registrar not to accept for registration. In respect of local and foreign companies, the relevant provisions were ss 22(1) and 341(1) respectively of the Companies Act (1970 Ed).

10 However, in 1984, s 22 was amended and paras (b) and (c) of what is now s 27 were introduced. From that time, this provision has prescribed that apart from cases in which the Minister has directed the registrar not to accept a name for registration, registration of a name for a company shall be refused if that name is undesirable, or if it is identical to the name of an existing company, corporation or business or so closely resembles such name as to be likely to be mistaken for it. No such amendment was ever made to s 341(1), which today is numbered s 378(1).

11 On a perusal of the whole of the present s 27, there appear to be some anomalies in the terms employed. Subsections (10) to (15) provide a scheme for

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reserving a company name before applying for it to be registered. Where appropriate there is express reference to foreign companies in contradistinction to local companies. Subsection (12), in particular, requires the registrar to be satisfied, inter alia, that the name of the intended company, company, or foreign company could be registered without contravention of sub-s (1) before reserving the proposed name. Yet the presence of s 378, and indeed the whole of Pt XI Div 2 of the Act, would appear to preclude the possibility of s 27(1) being relevant to foreign companies. On this point, the learned judge said in the course of his judgment reported in [1991] 1 MLJ 473 at p 476:

Reading ss 368, 369 and 378 together, it would appear that Parliament has created a business environment in Singapore in which all foreign companies are entitled to registration under this division for the purpose of carrying on business in Singapore, subject only to the prohibitions in s 369 and the restrictions as to the use of their names in s 378. The power, or the duty, of the registrar under s 378 is not affected or diminished in any way by s 27(12). I also agree that in s 27(1), the expression 'company' has the meaning as statutorily defined and that the contrary intention does not appear therein. In s 27, where a subsection is intended to apply to a foreign company, that expression is specifically used, as in sub-ss (10) and (12) to (15). With regard to sub-s (12), it is obviously a drafting mistake as it serves no purpose in preventing a foreign company from reserving a name which contravenes paras (b) and (c) of s 27(1) when the foreign company may still register such a name by virtue of ss 369 and 378. If the reservation of names provision in s 27 in respect of foreign companies had been placed in its proper context in Pt XI Div II, this anomalous requirement would have become evident.

12 We are entirely in agreement both with the learned judge's conclusion that sub-s (12) contains a drafting error and also with the reasons he has given for

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that conclusion. The consequences of that conclusion, however, may be limited in effect. As the learned judge pointed out, sub-ss (14) and (15) also contain specific references to foreign companies. Moreover Form 14B, which is prescribed in the Act as the form to be used for these purposes, contains on its face the heading 'The Companies Act (Chapter 50) Section 27(10) to (12)', followed by the title 'Application for Approval and Reservation of Name for Registration of a Foreign Company'. Evidently it was intended that the subsections relating to the reservation of names should be applicable to foreign companies.

13 On the other hand, Pt XI Div 2 of the Act was apparently intended to provide a comprehensive scheme for foreign companies. So long as a foreign company lodges with the Registry of Companies the list of documents specified in s 368 and pays the appropriate fees, then 'subject to this Act' the registrar shall register that company under Pt XI Div 2. 'Subject to this Act', then, must refer to the circumstances in which, despite the compliance by the foreign company with the conditions in s 368, registration under that division may nonetheless be refused, for example, by reason of the operation of s 369 or s 378. There appears to be no room for the operation of any part of s 27, which is not in that division.

14 It is impossible to construe ss 27 and 378 harmoniously so as to avoid any anomalies. However, the terms of s 27 are quite explicit — in the result, we are of the opinion that s 27(1) applies only to local companies and s 378(1) only to foreign companies, that the reservation of names is by reason of s 27(11) compulsory for local companies but not for foreign companies and that if foreign companies voluntarily elect to reserve a name then they are subject to the same scheme of reservation of names in s 27 as local companies are.

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15 On the issue of undesirability, we would observe that the fact that in s 27, an 'undesirable' name is treated distinctly from a name that is identical or confusingly similar to the name of an existing company, corporation or business implies that the fact that confusion of identity might arise is not 'undesirability' for these purposes, and the parallel (though not identical) terms of s 378(1) indicate that 'undesirable' in that subsection must have the same meaning as in s 27(1).

16 In *South Pacific Airlines of New Zealand Ltd v Registrar of Companies*, the New Zealand court held that in that jurisdiction 'undesirable' names included not only names of an obscene nature and those which would cause offence to a friendly state or religion or to any particular section/s of the local community, but also names that might mislead the public or would be likely to cause confusion. However, we were not referred to the whole of the relevant New Zealand legislation and therefore are unable to decide on the degree to which the word 'undesirable' in the New Zealand context is relevant to the construction of our ss 27(1) and 378(1).

17 Counsel also cited *Abacus Finance Ltd v Registrar of Companies*. Chan Sek Keong J, having found as a fact that the names 'Drilex Systems Pte Ltd' and 'Drilex Systems Inc' so resembled each other that they were likely to be mistaken for each other, went on to consider and apply this case, saying:

… In 1983, s 31 of the 1955 [New Zealand] Act had been amended to provide that the registrar might refuse to register any name which, in the opinion of the registrar, was undesirable. As Ongley J said (at p 609): 'Undesirability is now the sole criterion for the exercise of the registrar's discretion whereas under the repealed section, in the absence of consent, it was also necessary to consider as

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separate factors, resemblance of name of another company calculated to deceive and, as well, the public interest.'

Ongley J, in allowing the appeal, held that the inconvenience caused to the applicants was sufficient to make it desirable that ABL be directed to change their name. I quote below the relevant passages in the judgment (at pages 610–611):

'The question remains whether, having regard to the extent of the confusion likely to arise by reason of members of the public being deceived in this way, it is undesirable to permit the defendant company to continue to be registered in its present name. The detriment to the plaintiff company, as I see it, is one of the inconvenience only. But on the evidence before me it has not been a trifling inconvenience. As I have already said I do not think that its customers would be diverted to the defendant company. Nor do I think it likely that it would lose business merely because of the inconvenience which its potential customers might be occasioned through being misled. Mistakes in identity would be corrected no doubt by both companies but because the defendant company is a much bigger organization and is a public company I would expect the plaintiff company to have to bear the greater burden in redirecting persons and communications to their correct destinations. It might well be involved in expense in promoting recognition of its separate identity or in taking other steps to minimize the confusion.

Avoidable confusion in the identity of two limited companies is obviously undesirable. Whether the discretion to order a change of name should be exercised will depend on the circumstances of each case and where the objectionable result of persons being misled by the resemblance of names is inconvenience rather than financial detriment to the business of one of the

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companies, the degree of inconvenience will be a primary factor to be considered. It is urged by the defendant company that in the circumstances of this case a requirement to change its name should be avoided because of the inconvenience and expense that would be caused to it by the change and the adverse effect it may have on its Stock Exchange listing and dealings in its shares. In reaching my decision I take those considerations into account but I do not find that they have been shown to be of sufficient weight to alter my view as to what should be done. I find that the registration of the defendant company under the name of Abacus Holdings Ltd contravenes s 31(1)(a) of the Companies Act and that the evidence before me favours the exercise of my discretion to order a change of name under s 32(2).'

…

In my view, it is important to appreciate the principle that was applied in the Abacus case. Although Ongley J said that 'Avoidable confusion in the identity of two limited companies is obviously undesirable', he went on to identify the nature of the undesirability in terms of 'the degree of inconvenience … [as] … the primary factor'. Ongley J did not decide that any avoidable confusion will, per se, entitle the registrar to say that the name is undesirable. He still has to consider whether the confusion will cause financial detriment or some other kind of consequences to the objector. On the facts, he found in favour of AFL, not because AFL would suffer a financial detriment, but because of the great inconvenience to AFL as AFL would be expected to 'bear the greater burden in redirecting persons and communications to their correct destinations' and might well be involved in expense in promoting recognition of their separate identity or taking other steps to minimize the confusion. Ongley J did not think that the inconvenience and expense that would be caused by a change of name by ABL and the adverse effect it might have on ABL's Stock Exchange listing and

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dealing in its shares was sufficient to outweigh the degree of inconvenience caused to AFL. Ongley J's decision was therefore based primarily on a finding of fact as to the relative inconvenience to AFL and ABL.

In the case before me, the confusion in the names is not easily avoidable unlike in the case of two Singapore companies. In the case of a Singapore company, it has to reserve the name, whether for the purpose of incorporation or for a change of name. Any likely confusion that may arise is avoidable in such circumstances. In the case of a foreign company, it normally changes its name first in the country of its incorporation, and is only faced with an objection of confusion when it attempts to register itself in a foreign country or to change an existing name. In any case, where a foreign company, particularly a multi-national company, decides to change its name, the decision to do so is normally prompted by its business needs as a whole and is not primarily dictated by the needs of one of its many branches in the many countries in which it carries on business. In my view, the test applied by Ongley J must take these considerations into account in the case of foreign companies under a legal regime which gives priority to the location of multi-national companies in its territory.

With respect to the issue on inconvenience, what was and is expected to be the degree of inconvenience caused to the plaintiffs? On the evidence, nothing more than having received written and oral communications meant for the second defendants, and, perhaps, having to continue to do so.

18 The learned judge accordingly decided against the appellants on the issue of undesirability.

19 We are not persuaded that we should apply the New Zealand case law in defining 'undesirability' in this context to include the likelihood of confusion, when our statute suggests the opposite. However, this is not to say that the cases are of no help to us at all.

20 In our judgment and notwithstanding the anomalies to which we have drawn attention, the Act as it stands makes it plain that similarity in names is not in itself a sufficient reason for the registrar to refuse to register a foreign company's proposed name, as it is for a refusal to register a local company's proposed name. There must be something more which renders that similarity undesirable. This may take the conspicuous form of financial detriment, which would be the obvious consequence if the companies involved share a common field of activity, though of course there may well be other clear indications of financial detriment. All the same, if the companies concerned do not share a common field of activity then the presence or absence of financial detriment or any other matter which may render the similarity in names undesirable is an issue which is in its nature amenable to proof, and therefore in our judgment the court is inherently better placed than the registrar to decide this issue, with evidence and the full facts before it.

21 In the present case, in view of the dissimilarity in the fields of business undertaken by the appellants and the second respondent, the registrar was in our opinion entirely correct not to direct the second respondent to change its name in the first instance. Then, in this application under s 12(6) of the Act, the court had to look at the evidence before it and on the full facts consider first whether there was financial detriment to the applicant, and if not, had to weigh the relative inconvenience to each party of permitting or refusing the proposed name to be registered. This task the learned judge did in fact perform.

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22 On the facts we are of the view that, though the name 'Drilex Systems Inc' is likely to cause confusion with 'Drilex Systems Pte Ltd', no financial detriment by way of loss of business is likely to be suffered by the appellants. They no doubt suffer inconvenience from having to redirect the second respondent's mail, but against this must be weighed the consideration set out in full by Chan Sek Keong J, and we are not persuaded that his conclusion on the facts should be faulted. Accordingly we dismiss the appeal but with no order as to costs of the appeal. Consequently the security deposit is to be released to the appellants' solicitors.

Appeal dismissed.

Reported by Charmaine Lye

Goh Joon Seng J
L P Thean J
Yong Pung How CJ

Tang Khin Wai (Lee & Lee) for the appellants
Janis Woon (State Counsel) for the first respondent
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