IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[1996] SGCA 73

CA 80/1996

Between

Pestmasters Pte Ltd

… *Appellant*

And

Pestbusters Pte Ltd

… *Respondent*

GROUNDS OF DECISION

Civil Procedure — Appeals — Notice; Companies — Name; Words and Phrases

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Pestmasters Pte Ltd v Pestbusters Pte Ltd

[1996] SGCA 73

CA 80/1996
Karthigesu JA; L P Thean JA; Yong Pung How CJ
27 November 1996

1 Cur Adv Vult

2 This appeal arises from an order of the High Court made on 4 May 1996 setting aside the order made by the learned deputy registrar on 3 April 1996 that `the appeal against the Registrar of Companies` decision dated 2 June 1995 made by way of Originating Motion No 12 of 1996 by the appellant (Pestbusters, the respondent in this appeal) be struck out in so far as it concerns the second respondent` (Pestmasters, the appellant in this appeal).

3 We will set out briefly the events which led to the learned deputy registrar`s order and the setting aside of it by the High Court:

4 (i) Pestbusters, a local company engaged in the business of pest control and pest extermination, was incorporated and registered on 7 February 1992.

5 (ii) Pestmasters, also a local company engaged in the business of pest control and pest extermination, was incorporated and registered on 29 September 1994.

6 (iii) Sometime in May 1995 Pestbusters got to know of Pestmasters incorporation and registration. Since Pestmasters was engaged in the same commercial activity as Pestbusters, Pestbusters approached Pestmasters with a view to getting Pestmasters to change its name `due to the strong similarity of names` and the possible mistaking of the one for the other to the detriment of Pestbusters. However, Pestmasters would not agree.

7 (iv) On 25 May 1995 Pestbusters, through its solicitors, wrote to the Registrar of Companies objecting to the name of Pestmasters and requesting that the Registrar direct Pestmasters to change its name. The full text of Pestbusters` letter to the Registrar reads:

> *We act for PESTBUSTERS (S) PTE LTD (Registration No 199100593G) a company incorporated and registered in Singapore in 1991.*
>
> *We write to inform you that our clients object to the registration of a company under the name PESTMASTERS (S) PTE LTD (Registration No 199407032M and registered in 29.9.94) on the following grounds:*
>
> (1) that the name PESTMASTERS so nearly resembles the name under which another person carries on business as to be calculated to mislead; and/or
>
> (2) that the PESTMASTERS so nearly resembles the name of PESTBUSTERS as to be likely to be mistaken for it.
>
> *The relevant legislation is as follows:*
>
> (a) Section 11(b), Business Registration Act (Cap 32)
>
> (b) Section 27(1)(c) and s 27(2)(b) Companies Act (Cap 50)
>
> *These sections are appended to this letter for your easy reference.*
>
> *PESTBUSTERS, our client, has been in the pest-control and pest-extermination business for the past four years. They have expended almost half a million dollars on advertisements and promotions during that period of time. As a result, they have built up the reputation and goodwill of the company.*
>
> *There is no doubt that the name PESTMASTERS closely resembles the name of our client`s company, PESTBUSTERS.*

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> *Furthermore, both companies are in the same line of business, ie pest-control and pest-extermination. Putting these two facts together it can be seen that the use of PESTMASTERS is calculated to mislead the public into thinking that it is the more established and reputable company, PESTBUSTERS. Our clients strongly believe that the name PESTMASTERS was deliberately chosen to capitalise on and take advantage of their (PESTBUSTERS`) reputation and goodwill which has been carefully built up through advertisement blitzes. Under this misconception, potential clients of PESTBUSTERS would be quick to associate PESTMASTERS with PESTBUSTERS when they are actually two completely different companies. Section 11(b) Business Registration Act states that no businesses are to be registered if the name of the business so nearly resembles the name of another business as to be* ***calculated to mislead*** *[emphasis mine]. Our clients claim the protection of this section which allows your goodselves to either order a change in the name of the business or to cancel the registration.*
>
> *It is likely that PESTMASTERS could easily be mistaken for PESTBUSTERS which is a better-known company and because of that our client`s goodwill would be taken advantage of and reputation compromised. Section 27(1)(c) Companies Act states that a company with a name that nearly resembles the name of another company so as to be* ***likely*** *[emphasis mine] to be mistaken for it shall not be registered. The registration of PESTMASTERS is in contravention of s 27(1)(c) Companies Act. We ask that your goodself directs PESTMASTERS to change its name as is provided for in s 27(2)(a).*
>
> *In the circumstances and looking at the facts, the registration of PESTMASTERS has contravened s 11(b) Business Registration Act and s 27(1)(c) Companies Act. Our client`s business has been unfairly prejudiced by the use of the name PESTMASTERS and their wish is that the name be changed so that business can resume. Having laid out the situation before you, we urge your goodselves to direct the said company to change its name as is provided for both in s 11(b) Business Registration Act and s 27(2)(b) Companies Act.*
>
> *We would appreciate it if you could reply to us soonest possible.*

8 (v) The Registrar`s reply dated 2 June 1995 was received by Pestbusters` solicitors on the same day:

> *Complaint against company name Pestmasters Private Limited*
>
> *We refer to your letter dated 25 May 1995. Since the entity your client is complaining against (Pestmasters Private Limited) is a*

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> *company, s 11(b) of the Business Registration Act (Cap 11) is not relevant.*
>
> *It is our view that `Pestmasters Private Limited` does not so nearly resemble `Pestbusters (S) Pte Ltd` as to be likely to be mistaken for it.*
>
> *As such, we are not in a position to direct the above company to change its name.*

9 (vi) On 5 March 1996 Pestbusters filed the originating motion herein claiming, inter alia, the following:

> (1) A declaration that the name of the second respondent (Pestmasters) and its registration thereof is undesirable and that the said registration should be set aside.
>
> (2) A declaration that the first respondent`s (Registrar of Companies) act or decision in registering and/or allowing the second respondent to register its name on or about 29 September 1994 is wrong in law and/or contravenes s 27 of the Companies Act and that the said act or decision ought to be set aside.
>
> (3) An order that the second respondent (whether by itself or its servants or agents or any of them) be restrained and an injunction be granted restraining it from using the name `PESTMASTERS PTE LTD` as its name.

10 In the affidavit filed in support of the originating motion Pestbusters say this:

> *This originating motion is brought by way of appeal pursuant to s 12(6) of the Companies Act against the act or decision of the first respondent, Registrar of Companies (the Registrar) in (inter alia) approving and registering the name of the second respondent as `PESTMASTERS PTE LTD` and in refusing to direct the second respondent to change its name.*

11 (vii) Both the Registrar of Companies and Pestmasters were cited as parties and duly served with the originating motion.

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12 (viii) On 26 March 1996 Pestmasters took out a summons-in-chambers for the appeal against the Registrar of Companies` decision dated 2 June 1995 made by way of Pestbusters` originating motion to be struck out in so far as it concerned Pestmasters.

13 (ix) The learned deputy registrar heard the summons-in-chambers on 3 April 1996. He struck out the originating motion in so far as it concerned Pestmasters for the reason that the originating motion taken out by Pestbusters was served on Pestmasters far beyond the 28 days permitted by 55 r 3(2) of the Rules of Court.

14 (x) Pestbusters` appeal to the judge-in-chambers was heard by the learned judge on 30 April 1996. He delivered his decision on 4 May 1996 setting aside the learned deputy registrar`s order.

15 It is evident from a perusal of the notes of argument before the learned deputy registrar that he accepted the submission of Pestmasters` counsel that Pestbusters` appeal against the decision of the Registrar of Companies was against his refusal to direct Pestmasters to change its name as conveyed to Pestbusters by the Registrar`s letter dated 2 June 1995 and, accordingly, the computation of the 28 days pursuant to O 55 r 3(2) commenced from that date. Hence Pestbusters was out of time by eight months.

16 However, the learned judge took an entirely different view. Leaving aside the question of whether Pestmasters could be made a party to Pestbusters` appeal (the joinder argument) and whether injunctive relief can be claimed in an originating motion, the learned judge held that Pestbusters` appeal was expressly against the registration of Pestmasters on 29 September 1994 and not against the Registrar of Companies` refusal to direct Pestmasters to change its

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name as conveyed to Pestbusters by the Registrar`s letter dated 2 June 1995. This was not a point taken by Pestbusters but by the learned judge himself which he called a `fatal defect` that could not be rectified. An application to strike out an appeal different from that which was filed could not succeed. The learned judge`s judgment is reported at [1996] 2 SLR 780 .

17 The learned judge`s first reference to this is at p 782G-H where he said:

> *It is to be noted that the application is to strike out an appeal different from that which was filed by the appellant (Pestbusters). The appeal filed was expressly against the registration on 29 September 1994 and not against the reply of 2 June 1995. Nevertheless, the application was granted, from which the matter came before me on appeal.*

18 When the appeal was argued, this point was not raised. Instead counsel raised and argued other issues, and I think I should address the points they brought up.

19 After discussing these issues the learned judge concluded his judgment at p 784 as follows:

> *Having considered the issues raised by the second respondent (Pestmasters), I find merit in the joinder argument and I agree with the second point to the extent that the appeal should not include the claim for the injunction, but I reject the argument that the motion was filed out of time.*

20 However, all this cannot rectify the fatal defect in applying to strike out an appeal that is not there. I allow the appeal and set aside the deputy registrar`s order. Since the appellant (Pestbusters) did not draw attention to the defect to the deputy registrar or at the appeal, and in view of my findings on the points raised, I will not order costs in this matter, and each party will bear its own costs.

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21 But the learned judge did make a finding on the question of the appeal being out of time. Having determined that Pestbusters` appeal was expressly against the registration of Pestmasters on 29 September 1994 he held that time had not started to run when the appeal was filed on 5 March 1996. This was because O 55 r 3(4) provided that in the case of an appeal from a decision of a government department or other person the period of 28 days `shall be calculated from the date on which notice of decision was given to the appellant by the person who made the decision.` It would be unrealistic and unjust to apply the 28-day ruling to Pestbusters because that would deprive it of the right of appeal even before it knew of Pestmasters` registration. This was because the Registrar of Companies was not required to serve notice of his decision on every party aggrieved by the registration. In effect the learned judge adopted and followed the decision of Chan Sek Keong J in ***Drilex Systems Pte Ltd v Registrar of Companies & Anor*** [1990] 1 MLJ 199 ; [1989] SLR 1051 (see the learned judge`s judgment at p 784A-C).

22 Before we turn to consider the appeal we should dispose of a preliminary procedural point taken by Pestbusters in its written case that this appeal ought to be dismissed as Pestmasters had not obtained the leave of the court to appeal as was required by s 34(2)(d) of the Supreme Court of Judicature Act. To overcome this, Pestmasters took out a notice of motion to be heard by the Court of Appeal for leave to appeal under s 34(2)(d). We granted Pestmasters leave to appeal and ordered it to pay the costs of the motion to Pestbusters.

23 Section 34(2)(d) of the Supreme Court of Judicature Act provides as follows:

> *Except with the leave of the Court of Appeal or a Judge, no appeal shall be brought to the Court of Appeal in any of the following cases:*

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> (d) An order refusing to strike out an action or a pleading or a part of a pleading.

24 We ruled that the word `action` in s 34(2)(d) should be construed widely to include all originating processes and not restricted to proceedings begun by writ only. The words `pleading or a part of a pleading` were not intended to curtail the meaning to be ascribed to the word `action` to proceedings begun by writ alone. There were sufficient reasons, which need not be spelt out here, for us, in the exercise of our discretion, to have allowed Pestmasters` application notwithstanding the lateness of the application and the failure to strictly comply with O 56 r 3(1) of the Rules of Court.

25 In order to resolve the questions that arise in this appeal we must consider in logical sequence those provisions of the Companies Act (the Act) which are relevant for this purpose. They are:

26 (i) Section 19(1) which reads:

> *Persons desiring the incorporation of a company shall lodge the memorandum and the articles, if any, of the proposed company with the Registrar together with the other documents required to be lodged under this Act and the Registrar on payment of the appropriate fees shall,* ***subject to this Act****, register the company by registering the memorandum and articles, if any` (emphasis added).*

27 (ii) Section 22(1)(a) which reads:

> *The memorandum of every company shall be printed and divided into numbered paragraphs and dated and shall state, in addition to other requirements:*
>
> a the name of the company.

28 (iii) Sections 27(1), (2) and (5) which read:

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(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 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.

(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.

29 (iv) Section 12(6) which reads:

Any party aggrieved by the refusal of the Registrar to register any corporation or to register or receive any document or by any other act or decision of the Registrar may appeal to the Court which may confirm the refusal, act or decision or give such directions in the matter as seem proper or otherwise determine the matter but this subsection shall not apply to any act or decision of the Registrar -

(a) in respect of which any provision in the nature of an appeal or review is expressly provided in this Act; or

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> (b) which is declared by this Act to be conclusive or final or is embodied in any document declared by this Act to be conclusive evidence of any act, matter or thing.

30 From a consideration of the relevant provisions of the Act we have set out above, it seems to us that when a proposed company lodges with the Registrar its memorandum and articles, if any, together with the other documents it is required by the Act to lodge with the Registrar and pays the appropriate fee the Registrar shall, ***subject to the Act*** , register the company. This means that the Registrar, amongst other things, must consider s 27(1) of the Act before registering the company. It follows that the ***act*** of registration or the ***decision*** to register the company is made under s 19(1) of the Act and not under s 27(1). Section 27(1) is a mandatory provision the Registrar must consider before registering a company under s 19(1) of the Act.

31 In the factual context of this appeal the act or decision to register Pestmasters was an act or decision of the Registrar made on 29 September 1994 under s 19(1) of the Act. Pestbusters was not involved in and was not party to that act or decision. Accordingly, there was no obligation on the Registrar to notify Pestbusters of the registration of Pestmasters and she did not do so.

32 Although Pestbusters was not involved in and was not a party to the Registrar`s act or decision to register Pestmasters, Pestbusters was nevertheless aggrieved by the registration of Pestmasters and was an `aggrieved party` within the meaning of s 12(6) of the Act but in the opinion of Chan Sek Keong J (as he then was) only ***indirectly*** an aggrieved party: see ***Drilex*** [1990] 1 MLJ 199 at p 203A-C 2nd column; [1989] SLR 1051 at p 1058D-H.

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33 However, Pestbusters did not know of Pestmasters` registration when it was made on 29 September 1994 but only learnt of it sometime in May 1995, almost seven months after Pestmasters` registration.

34 Could Pestbusters have appealed against Pestmasters` registration when it learnt of it sometime in May 1995? If we have understood Pestbusters` contention correctly it could, since the right of appeal had not been shut out by the effluxion of time following the service of `notice of decision`. We were referred to O 55 r 3(4) of the Rules of Court which provides that time is to be calculated from the date on which `notice of decision` is given to the appellant, that is to Pestbusters, in this case. The time for appealing is 28 days [O 55 r 3(2)] from service of `notice of decision`. Reliance was placed on ***Drilex*** . The question then arises whether service of `notice of decision` is essential to initiate an appeal. We will revert to this question later in this judgment.

35 But Pestbusters did not appeal. Instead, as we have already noted in para 2(iv) above, Pestbusters, through its solicitors, addressed the Registrar on 25 May 1995 urging the Registrar to direct Pestmasters to change its name. Reference was made to s 27(2) of the Act. As noted in para 2(v) above the Registrar notified Pestbusters` solicitors on 2 June 1995 of her refusal to so direct Pestmasters. This clearly was a decision of the Registrar and equally clearly, it must have aggrieved Pestbusters.

36 Pestbusters did nothing for a further nine months and then on 5 March 1996 filed the originating motion herein pursuant to s 12(6) of the Act, purportedly appealing against the Registrar`s decision to register Pestmasters on 29 September 1994.

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37 Although the applicability of s 27(5) of the Act was not raised in argument we, nevertheless, feel that we should address it as Pestbusters` request to the Registrar directly referred to s 27(2) and the Registrar`s refusal by implication also referred to s 27(2). It will be remembered that s 27(5) refers to `the decision of the Registrar under subsection (2)` being subject to appeal to the minister.

38 In our view the power given to the minister by s 27(1) of the Act is to permit or allow a company`s name to be registered even if `in the opinion of the Registrar` the name

39 (a) is undesirable;

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

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

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

43 (1) In other words it is a dispensing power. So when a company has ***not been directed*** to change its name pursuant to s 27(2) of the Act because its name -

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

45 (b) so nearly resembles the name of another company or corporation as to be likely to be mistaken for it

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46 (1) there is nothing for the Minister to dispense to permit or allow the company in question from continuing to use the name by which it was first registered. It must follow that s 27(5) of the Act applies only to a company which is aggrieved by the Registrar`s ***direction*** to change its name under s 27(2) as it still wants to continue using the name by which it was first registered.

47 Hence `the view` expressed by the Registrar in her letter to Pestbusters` solicitors on 2 June 1995 was not a decision falling within s 27(5) of the Act. Nonetheless it was a decision not to direct Pestmasters to change its name.

48 In the result there are two decisions of the Registrar. One made on 29 September 1994 registering Pestmasters under s 19(1) of the Act and the other made on 2 June 1995 declining to direct Pestmasters to change its name. Pestbusters had no notice of the first but it certainly had notice of the second and yet failed to lodge an appeal within time of the Registrar`s decision given on 2 June 1995 because, or so Pestbusters contend, that its principal grievance was against the registration of Pestmasters in the first place on 29 September 1994 and not so much against the Registrar`s refusal to direct Pestmasters to change its name.

49 In our judgment, the Registrar`s letter to Pestbusters` solicitors of 2 June 1995 was more than just a refusal to direct Pestmasters to change its name, a direction the Registrar could have given only by invoking s 27(2)(a) or (b) of the Act. In so far as Pestbusters was concerned this letter was confirmation of the Registrar`s act or decision to register Pestmasters on 29 September 1994 and in our view Pestbusters ought to have considered it as such as the substance of its complaint to the Registrar dated 25 May 1995 was that the Registrar`s registration of Pestmasters on 29 September 1994 was in contravention of s 27(1)(b) and (c) of the Act. (See the full text at para 2(iv) above.)

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50 Thus, if Pestbusters required service of `notice of decision` from the Registrar of Pestmasters` registration in order to initiate an appeal, then the Registrar`s letter of 2 June 1995 to Pestbusters` solicitors was, in our view, such `notice of decision`. But, Pestmasters did not appeal by filing and serving notice of motion as required by O 55 r 3(2) and (4) of the Rules of Court within 28 days of the receipt of the Registrar`s letter of 2 June 1995 and now being several months out of time has lost its right of appeal against the Registrar`s decision of 2 June 1995 and can show no grounds for the court`s exercise of discretion to extend time.

51 Instead, as we have said earlier, Pestbusters fell back on the Registrar`s act or decision to register Pestmasters on 29 September 1994 and contend that since `notice of decision` to register Pestmasters on 29 September 1994 was not served on it the time for excluding an appeal has not begun to run. Reference is made to O 55 r 3(4) and reliance is placed on ***Drilex*** . The corollary of this contention must be that in the instant case until `notice of decision` to register Pestmasters is served on Pestbusters, Pestbusters` right to appeal has not arisen, in which case Pestbusters` appeal is premature and ought to be struck out.

52 In our judgment, if Pestbusters is right in its contention it would lead to absurd results giving rise to appeals by `an aggrieved party` who has not been served with the Registrar`s `notice of decision` to register a company many months after that company is registered. There would be no finality to the company`s registration. In our judgment, too, Pestbusters` reliance on ***Drilex*** is misplaced.

53 In ***Drilex*** , the court was concerned with s 378(1) and (2) of the Act which applies only to the registration of a foreign company`s name and any subsequent change in the name of the foreign company respectively. The facts

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are distinguishable from the facts of the instant appeal in that the plaintiffs in that case had objected to the Registrar of the registration of the foreign company`s name even before the Registrar had registered the foreign company and there was some confusion as to whether it was a case of first registration or a change of name. This was not material as the considerations the Registrar had to take into account under s 378(1) or (2) were exactly the same and are not similar to the considerations the Registrar has to take into account when registering a local company under s 19(1). Furthermore, Chan Sek Keong J was primarily concerned with the question whether the plaintiffs in that case were `an aggrieved person` within the meaning of s 12(6) of the Act. He prefaced his judgment [[1990] 1 MLJ 199 at p 201; [1989] SLR 1051 at p 1054] by saying, ` ***the plaintiffs` case was that they, as an aggrieved person*** , were exercising ***their statutory right of appeal under s 12(6) of the Act. ... In view of the plaintiffs` sole reliance on their right of appeal under s 12(6) of the Act, I need only consider whether they fall within the ambit of this section.*** `

54 Notwithstanding, that the plaintiffs in ***Drilex*** had objected to the Registrar even before she had registered the foreign company and had told the plaintiffs that she would look into the plaintiffs` complaint went on to register the foreign company and did not thereafter notify the plaintiffs of her decision to register the foreign company. The passage in Chan Sek Keong J`s judgment relied on by Pestbusters must be read in this context. He said [[1990] 1 MLJ 199 at p 205 B-C, 1st column; [1989] SLR 1051 at p 1061B]:

> *The registrar has also submitted that the appeal has been filed outside the period of 28 days allowed by O 55 r 3(2) of the Rules of the Supreme Court 1970 [same as O 55 r 3(2) of the Rules of Court 1996]. In my view, and here I agree with the submission of counsel for the plaintiffs, the period of 28 days runs from the date on which notice of the decision is given to the appellant: see r 2(4) [should read r 3(4)] and* ***Minister of Labour v General Iron & Steel Co (Wollescote Ltd)*** *([1967] 3 All ER 278). In the present case, no notice of the decision has been given to the plaintiffs at*

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> *all. The plaintiffs are accordingly not out of time in filing their appeal.*

55 (1) In our judgment this opinion based on the very special facts of ***Drilex*** is not an authority for the proposition contended by Pestbusters in this appeal.

56 We now turn to the question we posed in para 15 above. It is whether `notice of decision` is essential to initiate an appeal in this case. As we have already observed there was no obligation on the Registrar to serve Pestbusters with notice that she had registered Pestmasters on 29 September 1994. There is no statutory obligation or duty imposed on the Registrar under the Act for service of such a notice on any one whomsoever. Once the Registrar is satisfied that the documents lodged with her are in order; that the appropriate fee has been paid; and that the proposed name does not contravene s 27(1) she will register the memorandum and articles, if any, and then proceed to issue the certificate of incorporation under s 19(4) of the Act to that company.

57 Our reading of s 12(6) of the Act is that it gives a party, such as Pestbusters, who is aggrieved by the act or decision of the Registrar to register another company under s 19(1) of the Act, which as in this case as alleged has similarities of name, a right of appeal. However s 12(6) does not prescribe a time within which such an appeal may be brought. The procedural requirements for bringing an appeal to the High Court from acts or decisions of a person such as the Registrar pursuant to s 12(6) of the Act is spealt out in O 55 of the Rules of Court and in particular r 3. It is clear that O 55 r 3 is predicated on `notice of decision` being served on the party or person who has the right of appeal. But from the very fact that there is no statutory obligation or duty on the Registrar under the Act to serve `notice of decision` on a party or person aggrieved by an act or decision of the Registrar, O 55 r 3(4) cannot apply. The result is that O 55 r 3(2) does not come into operation. In our view in such a case the party or

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person aggrieved by an act or decision of the Registrar has a right of appeal pursuant to s 12(6) of the Act and can appeal to the High Court after that person or party has learnt of such act or decision.

58 For the reasons we have given above, service of `notice of decision` on Pestbusters, in our judgment, is not essential to initiating an appeal in this or in a case such as this.

59 Does it mean, then, that a company, like Pestbusters in this case, being aggrieved by an act or decision of the Registrar to register another company is left without any legal remedy if it learns of the registration of that other company after the 28 days limited by O 55 r 3(2) of the Rules of Court? We think not. There are other procedures available which are not constrained by time limits (the Limitation Act excepted) as for instance an order of ***certiorari*** under O 53 of the Rules of Court or, indeed a writ action. Of course if Pestbusters, being aggrieved by the act or decision of the Registrar in registering Pestmasters on 29 September 1994 had come to the court under s 12(6) of the Act within 28 days of that dateor within a reasonable time after the expiry of 28 days from that date the court would have had the jurisdiction to make a determination. However, the parameters of what is a reasonable time will depend on the particular facts of each individual case. In this case Pestbusters came to court about nine months after it first learnt of Pestmasters registration and in our judgment was clearly well out of time.

60 In the result we have reached we do not see the necessity to express our views on the `joinder argument` and on the question whether injunctive relief can be claimed in an originating motion and we refrain from doing so. In any case, those arguments were unhelpful and did not give us any assistance in determining this appeal.

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61 For the reasons we have given in this judgment Pestbusters` appeal by way of the notice of motion filed on 5 March is an abuse of process and should be struck out. Accordingly we set aside the learned judge`s order made on 4 May 1996 and restore the learned deputy registrar`s order made on 3 April 1996, including the order for costs. We award Pestmasters half the taxed costs here and below. The appeal deposit is refunded to the appellant Pestmasters or its solicitors.

62 ***Appeal allowed*** .

Karthigesu JA
L P Thean JA
Yong Pung How CJ

Dedar Singh Gill and Cecelia Girvin (Drew & Napier) for the appellant
Darshan Singh and Ranjit Singh (Darshan & Pnrs) for the respondent

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