

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1996] SGHC 96

OM 12/1996

Between

Pestbusters Pte Ltd

... Appellant

And

Registrar of Companies
Another

... Respondent

GROUND OF DECISION

Civil Procedure — Appeals; Civil Procedure — Appeals; Civil Procedure —
Parties — Joinder; Civil Procedure — Injunctions

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Pestbusters Pte Ltd v Registrar of Companies and Another

[1996] SGHC 96

OM 12/1996
Kan Ting Chiu J
04 May 1996

1 This is a appeal against the deputy registrar's order striking out an appeal against the decision of the Registrar of Companies (the first respondent) to approve and register the name of the second respondent Pestmasters Pte Ltd on 29 September 1994. The appellant, which was incorporated on 7 February 1992, alleged that the second respondent's name is undesirable because it is identical to or so nearly resembles its name Pestbusters Pte Ltd that it is likely to be mistaken for with it, or be mistaken as having a connection with it, and therefore the registration of the second respondent's name was in contravention of s 27(1) of the Companies Act (Cap 50, 1994 Ed).

2 The appellant was not notified of the registration when it was done, and came to know of it seven months later in May 1995. On 25 May their solicitors wrote to the Registrar of Companies to request that she directs the second respondent to change its name. She was not persuaded, and replied to the solicitors on 2 June that, 'It is our view that "Pestmasters Private Limited" does not so nearly resemble "Pestbusters (S) Pte Ltd" as to be mistaken for it.'

3 Being dissatisfied with that, the appellant appealed by filing an originating motion on 5 March 1996 in compliance with O 55 of the Rules of Supreme Court seeking the following reliefs:

(1) A declaration that the name of the second respondent and its registration thereof is undesirable and that the said registration should be set aside. (2) A declaration that the first respondent's 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.

4 The reliefs were similar to those sought by the plaintiffs in ***Drilex Systems Pte Ltd v Registrar of Companies & Anor*** [1990] 1 MLJ 199, which dealt with an appeal against the Registrar of Companies' decision to approve a foreign company (the second defendants in that action) to change its name.

5 The second respondent applied by summons-in-chambers:

That the appeal against the Registrar of Companies' decision dated 2 June 1995 by way of Originating Motion No 12 of 1996 by the appellant be struck out in so far as it concerns the second respondent.

6 It is to be noted that the application is to strike out an appeal different from that which was filed by the appellant. 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.

7 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.

8 The second respondent raised three grounds for striking out the appeal. The first is that the second respondent had no role in the decision made by the Registrar and therefore cannot be a party to the appeal. Counsel for the appellant pointed out that O 55 does not require his client to be joined as a party. Order 55 r 3(1) stipulates that in an appeal against an order, determination, award or other decision of a tribunal, minister, government department or other person, every party to the proceedings (other than the appellant) in which the decision appealed against was given is to be served with the notice of motion by which the appeal is brought. Counsel argued that service and joinder are not synonymous. This was considered by Chan Sek Keong J in ***Drilex***, where he said at p 205:

Order 55 r 3 provides that notice of the originating motion must be served on all parties to the decision appealed against. The second defendants are a party to the decision of the registrar. They have been notified of the appeal by their inclusion as a defendant. This is not the same thing as providing that a party to a decision under appeal shall be a party to the appeal, but it is very close to it.

9 Initially, I was inclined to take the same position. After all, if one party applies to set aside another party's registered name, it should be right that the second party be entitled to be heard in the application. However, counsel for the second respondent said that his client does not wish to be heard in that appeal, and does not want to be a party to it. That put the matter in a different light. Since it is not obliged to be a party to the appeal and since it does not want to be a party, the appellant cannot compel the second respondent to be involved in the appeal. If, on the other hand, it wants to be heard in the appeal (that may be

the position of the second defendants in **Drilex**), then it cannot complain that the appellant made it a party in the appeal without waiting for it to apply to be joined.

10 The second point is that substantive injunctive relief was sought which is only available when a course of action exists against the party sought to be restrained. On this I will say firstly that this ground does not justify striking out the whole appeal against the second respondent because the appellant is seeking other reliefs as well. Proceeding on the narrower tack, it is arguable (but not argued by counsel) that an appellant against the Registrar`s decision cannot seek relief against a third party that the Registrar has neither the jurisdiction nor the power to give, and if the appellant wants an injunction against the second respondent, it must seek it through a separate originating process.

11 The third point is that `under O 55 r 3(2) of the Rules of Supreme Court the notice of appeal must be filed within 28 days after the date of the decision against which the appeal is brought. The time limited for the appeal has therefore expired.`

12 The date of service was not disclosed. As the motion was filed on 5 March 1996, notice must have been served between that date and 26 March 1996 when the application to strike out was filed.

13 Service of the motion is governed by sub-rr (2), (3) and (4) of O 55 r 3, which say:

(2) The notice must be served within 28 days after the date of the judgment, order, determination or other decision against which the appeal is brought.

(3) In the case of an appeal against a judgment, order or decision of a Court, the period specified in paragraph (2) shall

be calculated from the date of the judgment or order or the date on which the decision was given. (4) In the case of an appeal against an order, determination, award or other decision of a tribunal, Minister, Government department or other person, the period specified in paragraph (2) shall be calculated from the date on which notice of decision was given to the appellant by the person who made the decision or by a person authorised in that behalf to do so.

14 Sub-rule (3) applies only to appeals against judgments, orders or decisions of courts, and does not apply to an appeal against the decision of the Registrar of Companies.

15 It is agreed that no notice of the decision to register the second respondent's name was served on the appellant. No complaint can be made over that because the Registrar is not required to serve notices of her decision on every party which may be aggrieved by the registration, but nothing turns on that. What is important is that under sub-r (4) the time for filing runs from the time the notice of decision is given to the appealing party. In **Drilex**, the plaintiffs were not given the notice of decision of the Registrar to allow the second defendants to change their name from GrantTool Oil Co to DrilexSystems Inc and the name had been changed for longer than 28 days by the time they filed their appeal. The Registrar of Companies argued that it was out of time under O 55 r 3(2). Chan Sek Keong J ruled that time has not run out because time starts to run only when the appellant is given the notice of the decision. Likewise, on the facts of the present case, time has not started to run, much less run out, when the appeal was filed on 5 March 1996. Quite apart from the ruling in **Drilex** and the clear words of sub-r (4), it is unrealistic and unjust to apply the 28-day period to the appellant because that would deprive it of the right of appeal even before it knew of the registration.

16 Having considered the issues raised by the second respondent, 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 motion was filed out of time.

17 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 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.

18 ***Appeal allowed .***

Kan Ting Chiu J

Darshan Singh Purain (Darshan & Partners) for the appellant
Dedar Singh Gill and Cecelia Ann Girvin (Drew & Napier) for the
respondents
Pang Kang Chau (State Counsel) holding watching brief for the
Registrar of Companies
