IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 221

DC Suit 4914/1995

Between

Techmex Far East Pte Ltd

… *Plaintiff*

And

Logicraft Products
Manufacturing Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Civil Procedure — Summary judgment

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Techmex Far East Pte Ltd v Logicraft Products Manufacturing Pte Ltd

[1997] SGHC 221

DC Suit 4914/1995
Chao Hick Tin J
29 August 1997

Judgment:

CHAO HICK TIN J

An important point of procedure was raised in this appeal from a decision of a deputy registrar of the subordinate courts. It is also in a sense novel because there does not appear to be a local decision on it. The point is whether a second O 14 application may ever be made in an action after the first has been dismissed and no appeal has been brought against that decision.

2. **Statement of claim**

The facts as pleaded in the amended Statement of claim are as follows. In August 1995, the plaintiffs agreed to sell to an Indian company in Madras (Indian buyer) four Agfa Arcus II PC colour scanners and three Agfa Horizon Plus colour scanners for S$98,600. At about the same time the defendants also sold various goods to the same Indian buyer. It was agreed between the three parties that the plaintiffs would deliver the seven scanners to the defendants`

premises at the Kallang Basin Industrial Estate for batching with the defendants` goods so that the defendants could ship them together to the Indian buyer. It was agreed between the plaintiffs and the defendants, or alternatively, it was their implied understanding that -

> (i) the defendants would not release the goods to the buyer until the defendants had received payment for the goods or a form of secured payment such as a confirmed sight letter of credit; and
>
> (ii) the defendants would pay the plaintiffs on receipt of payment from the buyers.

3.On 15 August 1995 the seven scanners were delivered by the plaintiffs to the defendants` premises and were shipped to India. However, the plaintiffs have not received payment. The plaintiffs claim payment from the defendants on two bases: (i). breach of agreement or an implied term;

(ii). negligence, by releasing the scanners to the Indian buyer without obtaining payment or security for the payment.

4. **Defence**

In their defence the defendants, while admitting that the plaintiffs requested that the scanners be shipped with the defendants` goods, deny any assumption of duty on their part to collect payment or obtain security on behalf of the plaintiffs. The defendants say that they did not have any knowledge of the payment arrangement made between the plaintiffs and the Indian buyer. By a letter of indemnity dated 14 August 1995 the plaintiffs even gave an undertaking to the defendants that the latter were not to be held responsible for payment should the buyer default in the payment to the plaintiffs. The defendants deny that they

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were negligent or in breach of any duty of care to the plaintiffs. The defendants deny receiving any payment from the Indian buyer for the plaintiffs` goods.

5. **Order 14 applications**

The plaintiffs` first application for summary judgment came before the district judge on 18 February 1997 who dismissed it. No appeal was lodged against that decision.

6.On 10 April 1997, the plaintiffs obtained leave of court to further amend the amended statement of claim to allege that the Indian buyer had informed the plaintiffs that on 1 September 1995 they had paid the defendants, inter alia, the sum of $98,000 in respect of the plaintiffs` goods and thus the plaintiffs are claiming that sum against the defendants, being money had and received by the defendants to the use of the plaintiffs.

7.Following the filing of the re-amended statement of claim the plaintiffs applied again for summary judgment. The deputy registrar refused the application apparently on the ground that a second application was not permissible. From the notes recorded that seemed to be the main point. The plaintiffs appealed to the High Court and it came before me.

8. **Is a second application permissible?**

To consider this question, it is necessary to see what O 14 r 1 provides. It reads:

> *Where a statement of claim has been served on a defendant and that defendant has entered an appearance in the action, the plaintiff may, on the ground that that defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the*

> *amount of any damages claimed, apply to the Court for judgment against the defendant.*

9.It is clear that the rule does not expressly state whether a second or further application may or may not be made though it allows for an application for part of a claim.

10.An early case on point would appear to be **Dombey & Son v Playfair Bros** [1897] 1 QB 368 where the defendants were given leave to defend because they had been sued as individuals rather than the firm in which they had accepted the relevant bill of exchange. The plaintiffs amended the writ and applied again. The Court of Appeal held they were entitled to do so. Lord Esher MR said (at p 369):

> *It is said, however, that a master had previously made an order giving unconditional leave to defend, and that the matter is res judicata and cannot be reopened. This argument appears to me to be untenable, for the matter adjudicated upon is not the action but merely a step in the action.*

Lopes LJ put it more to the point when he said,

> *I have no doubt that on the first application unconditional leave to defend was given on a technical objection and that there was nothing like a judicial decision on the case.*

11.In **Bristol & West Building Society v Brandon** [1995] TLR 152, Colman J held that there could be more than one application for an order for summary judgment under O 14 in the same case so long as there was a separate legal or factual basis for the new application. However, the very brief report does not give any details as to the separate factual or legal basis upon which the second application was granted. According to the transcript of the judgment in **DG Finance Ltd v Scott & Anor** (Unreported) of the English Court of Appeal (dealt with below), Colman J had said:

> *The efficient administration of justice demands that, if the statement of claim is amended to plead the claim on a new legal or factual basis in relation to which there would be no defence, the sooner the proceedings are stopped by final judgment being given the better.*

12.In ***DG Finance Ltd v Scott & Anor*** the plaintiffs, a finance company, hired to the first defendant a new trailer for a period of five years. The trailer was supplied by a firm, Avrilo Ltd. Some six weeks later the first defendant returned the trailer to Avrilo Ltd for the purpose of having certain alterations made to it. In the next four days the trailer was apparently stolen. The first defendant stopped payment and the plaintiffs cancelled the hire agreement. The plaintiffs sued in the county courts and obtained judgment against the first defendant who by then had become a bankrupt. Avrilo too went into liquidation. The plaintiffs then joined the insurers, Eagle Insurance Co Ltd, as second defendants and asserted that the insurers were obliged to indemnify the plaintiffs in respect of their claims against the first defendant. The plaintiffs first applied for summary judgment against the insurers on the basis of the re-amended statement of claim. The court granted the insurers leave to defend. The plaintiffs filed notice of appeal. At the same time the plaintiffs obtained leave to further amend their pleadings to insert a claim for a declaration and made a second application for summary judgment on the basis of the re-re-amended statement of claim. The second application was heard by a different county court judge who dismissed it as an improper application as the court had earlier given the insurers unconditional leave to defend. The plaintiffs appealed against this order too. Both the appeals came before the Court of Appeal.

13.Hobhouse LJ, who delivered the judgment of the court, first noted that as the rule allowed for application for a claim or part of a claim in the statement of claim, that raised the possibility that succeeding applications might be made in

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respect of different claims or parts of claims. However, he recognised that a repeat O 14 application on the same claim would face difficulties. He explained it thus:

> *But where the application is repeated in respect of the same claim, the wording of the rule raises problems for the applicant. He has to be able to swear that there is no defence to his claim. If the same claim has already been considered by the court and leave to defend has been given, it will be difficult for the applicant to swear the requisite affidavit; it would have to be a most unusual case to justify his doing so. Further the ordinary principle applies that a previous interlocutory decision ought not to be altered on a later application (save by way of appeal) unless it was of a provisional character or there has been a sufficiently significant change of circumstance.*

But he did not think that the mere fact that there was a prior grant of leave to defend must necessarily preclude a subsequent application for summary judgment on the same claim.

14.Relying on both ***Dombey*** and ***DG Finance*** , Hobhouse LJ came to the conclusion that -

> *A second application may be entertained where, since the previous unsuccessful application, there has been some change in the proceedings which has given rise to a new situation, not covered by the decision on the earlier application, sufficiently cogent to justify the further application.*
>
> *In the present case, the first application for summary judgment failed because, on the view of Judge Hague, it was not adequately covered by the plaintiffs` particulars of claim as they then stood. If the defect was capable of being cured by amendment, then there was scope for making a further application. Judge Meier should have entertained that application.*

15. **My decision**

Initially I had thought that perhaps implicit in O 14 was the policy that a plaintiff should only have one bite at the cherry, and if he failed for whatever the reasons, the matter should go to trial. But having reviewed the matter and having regard to the real objective behind O 14, that perhaps is too narrow a perception. If an application fails because of some technical defects, not because the registrar thinks that there are factual issues to be tried, there can hardly be any estoppel as there was no determination on the merits whether there ought to be a trial. It seems to me if the factual or legal basis of a claim has been altered because of amendments to the pleadings, there is much to commend itself, on the rationale expounded by Colman J in ***Bristol & West Building Society*** , namely, the efficient administration of justice, to allowing a second application. Quite clearly what would constitute a new factual or legal basis must vary from case to case. I do not think it possible or advisable to lay down any single criterion to determine that question. Lest it be thought that this might lead to the opening of a flood-gate, I wish to add this clarification. If on an application leave to defend is allowed, and no appeal is brought against that decision, a second application should not be permitted if it relates to the same claim or claims with perhaps better evidence. That would not constitute a new factual basis. The plaintiff would have to live with his default, tendering of inadequate evidence at the first application, and should proceed to trial.

16.In the present case, the notes of the court below do not indicate the ground(s) upon which the district judge decided to dismiss the application for summary judgment. In fact, he did not expressly grant unconditional leave to defend. But for the present purposes, I was prepared to assume that on the two bases alleged in the amended statement of claim, namely, in contract and in negligence, the district judge had thought that there should be leave to defend. A claim based upon money had and received was not pleaded even though the affidavits filed

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by the plaintiffs would suggest that that was another basis of their claim. It was in view of the fact that a claim based on money had and received was not pleaded that the defendants in their written submission to the district judge objected to that claim. Therefore it seemed to me clear that the district judge did not consider the O 14 application on the basis of money had and received. The re-amended statement of claim introduced for the first time a claim based on money had and received. There could be no question of abuse of process, estoppel or res judicata, if a second application for summary judgment was brought based on that new plea. Thus I held that the plaintiffs could make the second application.

17.In passing I should mention that after hearing counsel for the parties on the merits on the claim based on money had and received, I gave the defendants leave to defend as I felt that the documents exhibited contained some discrepancies and required clarification. I felt there should be further discovery and a trial.

Chao Hick Tin J

Susan Tang (Francis Khoo & Lim) for plaintiffs
Joseph Chia (Joseph Chia & Co) for defendants

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