Obegi Melissa and Others v Vestwin Trading Pte Ltd and Another
[2008] SGCA 4

Case Number : CA 25/2006, 33/2006, 45/2006

Decision Date : 28 January 2008

Tribunal/Court : Court of Appeal

Coram : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA

Counsel Name(s) : Kenneth Tan SC and Cham Shan Jie Mark (Kenneth Tan Partnership) for the appellants; Vinodh Coomaraswamy SC and Georgina Lum Baoling (Shook Lin & Bok) for the respondents

Parties : Obegi Melissa; Oaktree Capital Management LLC; Gryphon Domestic VI, LLC; OCM Opportunities Fund II, LP; OCM Opportunities Fund III, LP; Columbia/HCA Master Retirement Trust; Gramercy Emerging Markets Fund; Gramercy Advisors LLC; Tang Boon Swa; Nemesis Investigations Pte Ltd — Vestwin Trading Pte Ltd; Hill Tree Enterprise Pte Ltd

Civil Procedure – Pleadings – When pleadings in multiparty action deemed closed – Whether time may be extended for summary judgment application – Order 14 r 14, O 18 r 20 Rules of Court (Cap 322, R 5, 2004 Rev Ed)

Courts and Jurisdiction – Jurisdiction – Whether time limit in O 14 r 14 Rules of Court (Cap 322, R 5, 2004 Rev Ed) for summary judgment applications absolute or extendable by court – Order 3 r 4 Rules of Court (Cap 322, R 5, 2004 Rev Ed) – Section 18(2), First Schedule para 7 Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed)

Statutory Interpretation – Interpretation act – Whether Rules Committee competent to exclude court's discretion to extend time – Section 53 Interpretation Act (Cap 1, 2002 Rev Ed)

Tort – Confidence – Whether breach of confidence a triable issue where documents obtained from discarded rubbish bags

28 January 2008

V K Rajah JA (delivering the grounds of decision of the court):

Introduction

1 This was a consolidated appeal against the decision of the High Court judge ("the Judge") in Suit No 542 of 2005 ("the present suit"), which is an action by the respondents against the appellants founded on, *inter alia*, breach of confidence in relation to and conversion of certain allegedly confidential documents ("the Documents") (see *Vestwin Trading Pte Ltd v Obegi Melissa* [2006] 3 SLR 573 ("the GD")). The Judge granted summary judgment in favour of the respondents and ordered, *inter alia*:

(a) a permanent injunction restraining the appellants from using or disclosing the Documents;

(b) a mandatory injunction requiring the appellants to deliver up to the respondents all originals and copies of the Documents; and

(c) an inquiry into the damage suffered by the respondents as a result of the appellants'

breach of confidence and/or conversion.

2 The present suit stemmed from three affidavits deposed by the first appellant ("the first appellant's affidavits") which had been filed in an earlier action, Suit No 632 of 2004 ("S 632/04"). That suit was brought by the third to the seventh appellants against, among others, an Indonesian company, PT Indah Kiat Pulp & Paper Corporation ("Indah Kiat"), to enforce a judgment of the Supreme Court of the State of New York for the sum of US$75,576,734.86 with costs and interest.

3 On 27 June 2005, the third to the seventh appellants obtained default judgment for the above amount against Indah Kiat in S 632/04. They then, *qua* judgment creditors of Indah Kiat, engaged the services of the tenth appellant, a private investigation firm, to secure information relating to the respondents, which they believed were owned by the same Indonesian family that allegedly owned Indah Kiat. Investigations were carried out by the ninth appellant, a director of the tenth appellant. In the process, the ninth appellant retrieved the Documents from rubbish which the respondents had discarded from their office at Orchard Towers. On the basis of these materials, which were exhibited in the first appellant's affidavits, the third to the seventh appellants obtained a Mareva injunction (in S 632/04) on 8 July 2005 to restrain Indah Kiat from, *inter alia*, disposing of, dealing with or diminishing the value of the debts owed to it by the respondents to the value of US$75,576,734.86.

4 The respondents, which were not parties to S 632/04, subsequently commenced the present suit claiming proprietary confidence in the Documents and asserting that a breach of confidence had been occasioned by the exhibition of those documents in S 632/04. In the respondents' amended statement of claim dated 31 August 2005, it was pleaded that the ninth appellant, acting as a servant and/or agent of the tenth appellant, had obtained the Documents surreptitiously and/or by improper or unconscionable means, and had thereafter passed them to the first to the eighth appellants in breach of the obligation of confidence which he and the tenth appellant owed to the respondents. It was asserted that the first to the eighth appellants, by receiving the Documents in such circumstances and having been placed on notice that the Documents were confidential, similarly owed the respondents a duty of confidence. The first to the eighth appellants, it was alleged, had breached this duty by using the Documents without the permission of the respondents to the latter's detriment.

5 On 20 December 2005, the respondents filed a summary judgment application ("SIC 6394/05") pursuant to O 14 of the Rules of Court (Cap 322, R 5, 2004 Rev Ed) ("the Rules") in the present suit against all the appellants. In resisting this application, the appellants raised the preliminary objection that as against all the appellants except the eighth appellant, the application had been made out of time in contravention of O 14 r 14 read with O 18 r 20 of the Rules. (For ease of exposition, this preliminary objection will be referred to as "the procedural point" in these grounds of decision.) On the substantive merits of SIC 6394/05, the appellants vigorously contended that the Documents were not confidential and, further, that they could not be held liable for conversion or theft because the respondents had abandoned and had thus relinquished ownership of the Documents and their contents. In this regard, it was highlighted that the ninth appellant had retrieved the Documents not from the respondents' office itself, but from rubbish bags which the respondents had left for collection at the bin centre of Orchard Towers (which, as mentioned at [3] above, was where their office was located). The third to the seventh appellants further contended that, in any case, they had purchased the Documents in good faith from the tenth appellant and, thus, did not have notice that those materials had been obtained improperly as the respondents claimed.

The decision below

6 The Judge found that SIC 6394/05 had been filed within the time limit for making a summary judgment application, *viz*, "[not] more than 28 days after the pleadings in the action are deemed to be closed" (see O 14 r 14 of the Rules). Applying O 18 r 20(1)(*b*) of the Rules (which states that where neither a reply nor a defence to counterclaim is served, pleadings are deemed to be closed "at the expiration of 14 days after service of the defence"), the Judge held that the pleadings had been deemed to be closed only on 22 December 2005, the date falling 14 days after the last defence in the present suit (*viz*, the eighth appellant's defence) was filed (see the GD at [9]). Noting (at [8] of the GD) that both O 14 r 14 and O 18 r 20 of the Rules referred to "action" in the singular form, the Judge reasoned that, in a suit against multiple defendants, there must be only one date for the close of pleadings regardless of the particular dates on which each defendant filed its defence. That date occurred – where O 18 r 20(1)(*b*) applied – 14 days after the last relevant defence was filed. The Judge concluded (at [15] of the GD):

> To require that the [respondents] take out separate applications for summary judgment against the respective [appellants] would lead to multiplicity of actions and wastage of costs. All the reasons in favour of a single trial also point to why there should be a single O 14 application. I conclude therefore that the [respondents'] application is within time not only as against the eighth [appellant] but as against all the [appellants]. Even if I were wrong, this would seem to me a paradigm case where the court should allow an extension of time to prevent injustice.

7 With regard to the merits of SIC 6394/05, the Judge held, for the following reasons, that there were no triable issues which warranted giving the appellants leave to defend.

8 First, it was "untenable in law" (see the GD at [23]) for the appellants to contend that by putting rubbish containing the Documents out for collection, the respondents had abandoned the Documents and therefore could not assert any property rights in those materials. The Judge adopted (at [26] of the GD) the definition of "abandonment" in *Simpson v Gowers* (1981) 121 DLR (3d) 709 at 711, namely:

> … "a giving up, a total desertion, and absolute relinquishment" of private goods by the former owner. It may arise when the owner with the specific intent of desertion and relinquishment casts away or leaves behind his property …

Citing (at [24] of the GD) *Williams v Phillips* (1957) 41 Cr App Rep 5, the Judge also stated (at [27]–[29] of the GD) that:

> 27 Putting rubbish out for collection by refuse collection personnel is not an abandonment because there is no intent to relinquish the goods absolutely but only conditionally for the purpose of such collection.
>
> …
>
> 29 … [E]ven if abandonment were in and of itself sufficient to divest the [respondents] of property in the rubbish, the [appellants] had not adduced evidence anywhere close to discharging their burden of proof that the [respondents] had abandoned the [D]ocuments. I therefore agreed with the [respondents] that there was no triable issue on this point.

9 Second, the judge found (at [31] of the GD) that "it was unarguable that the ninth [appellant] had surreptitiously and improperly obtained the [D]ocuments by criminal means (*ie*, theft) and unlawful means (*ie*, conversion)".

10 Third, the judge held that the three elements essential to an action for breach of confidence, as set out in *Coco v A N Clark (Engineers) Ltd* [1969] RPC 41, had been made out in that:

(a) The information contained in the Documents was confidential as it related to, *inter alia*, the respondents' financial affairs, management procedures and trading practices (see [41] of the GD).

(b) The information had been communicated in circumstances importing an obligation of confidence on the part of the first to the eighth appellants because they had become aware of the confidential nature of the information as well as the circumstances in which the Documents had been obtained (see [53] of the GD). The Judge ruled that for the purposes of imposing an obligation of confidence on the first to the eighth appellants, it was not necessary to find that they had acted in bad faith or had participated in the improper means utilised by the ninth and the tenth appellants to obtain the Documents (see [51] of the GD).

(c) The appellants had made unauthorised use of the information contained in the Documents. Although the law was unclear as to whether such unauthorised use had to be to the respondents' detriment, the uncertainty in this regard was immaterial in the present suit as the respondents had suffered detriment (see [68]–[75] of the GD).

11 On appeal, it was submitted that the respondents were not procedurally entitled, without a judicially sanctioned extension of time, to apply for summary judgment against the eighth appellant, and that there were triable issues as to the appellants' alleged liability to the respondents for conversion and breach of confidence. We broadly agreed with the appellants' submissions and allowed the appeal. We now give the reasons for our decision.

The procedural point

12 The procedural point encompasses two overarching questions. First, in multi-defendant proceedings, are pleadings deemed to be closed only 14 days after *the last* defence or reply is served, or 14 days after *each* defence or reply is served? In other words, can there be multiple dates for the deemed close of pleadings in the same suit? The second question, which arises only if the first question is answered affirmatively, is this: If pleadings in a multiparty action are deemed to be closed according to the respective dates on which each defence or each reply is served, can the court – in a case where the time limit for applying for summary judgment has expired against one or more defendants – grant the plaintiff(s) an extension of time to apply for summary judgment so as to consolidate the various O 14 applications against different defendants? We will address these two issues sequentially, dealing, first, with the question of whether there can be more than one date for the deemed close of pleadings in a multiparty action and, second, with the nature of the prescribed timeline in O 14 r 14 of the Rules for making summary judgment applications.

When pleadings are deemed to be closed in a multiparty action

13 The close of pleadings is an important juncture in a writ action. It indicates that the issues in dispute have been sufficiently crystallised by the process of allegation, denial, admission and deemed denial in that order. There is thus at the close of pleadings an implied joinder of issue on the pleading last served (see O 18 r 14(2)(*a*) of the Rules). The close of pleadings also serves as the cut-off point for one-time amendments to the writ or other pleadings made without the leave of the court under O 20 r 1 and O 20 r 3 respectively of the Rules. Further, it signifies the commencement of the timeline under O 25 r 1 of the Rules for taking out a summons for directions as well as triggers in appropriate cases the operation of the automatic directions under O 25 r 8 of the Rules.

14 Order 18 r 20 of the Rules, which defines the point at which the pleadings in an action are deemed to be closed, stipulates:

> **Close of pleadings (O. 18, r. 20)**
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> **20.**—(1) The pleadings in an action are deemed to be closed —
>
> (*a*) at the expiration of 14 days after service of the reply or, if there is no reply but only a defence to counterclaim, after service of the defence to counterclaim; or
>
> (*b*) if neither a reply nor a defence to counterclaim is served, at the expiration of 14 days after service of the defence.
>
> (2) The pleadings in an action are deemed to be closed at the time provided by paragraph (1) notwithstanding that any request or order for particulars has been made but has not been complied with at that time.

15 The Rules do not expressly address the issue of when pleadings in a multiparty case are deemed to be closed where the last relevant pleading of the various parties is filed on different dates. This issue was alluded to in the earlier High Court decision of *Sumikin Bussan Corp v Hiew Teck Seng* [2005] 2 SLR 773 ("*Sumikin Bussan*"), where Judith Prakash J took the view that the pleadings would be deemed to be closed *vis-à-vis each defendant* by reference to the date on which that defendant filed its defence. She stated at [3]:

> The Writ was duly served and both defendants entered appearance. The second defendant filed his Defence on 7 June 2004 and the first defendant filed his Defence one week later on 15 June 2004. The plaintiff did not file a Reply at that stage to either Defence and this meant (by reason of the application of O 18 r 20(1)(b) [of the Rules]) that *as against the second defendant, pleadings were deemed to be closed on 21 June 2004 and, as against the first defendant, pleadings were deemed to be closed on 29 June 2004.* Accordingly, the plaintiff had up to 5 July 2004 to make a summary judgment application against the second defendant and up to 13 July 2004 to make a similar application in respect of the first defendant. No such application was filed by the respective dates. [emphasis added]

16 In the present suit, the Judge took the contrary view, holding that the same date for the deemed close of pleadings would apply to *all the parties* in a multiparty action, with that date to be calculated from the time of the filing of the last relevant pleading.

17 At first blush, the Judge's view as set out in the preceding paragraph finds some glimmer of support from *Bannister v SGB Plc* [1998] 1 WLR 1123, where the English Court of Appeal held at [4.2]:

> If *all* the original defendants deliver *a defence* the trigger date is calculated from the date the last defence was delivered. The trigger date is not altered if a defence is later amended. [emphasis added]

Indeed, given that O 18 r 20(1)(*b*) of the Rules is silent on whether each defence served or only the last defence served triggers the start of the 14-day period leading to the deemed close of pleadings, both the position taken in *Sumikin Bussan* and that adopted by the Judge in the present suit are *prima facie* plausible; neither view is irrefutably supported by the language of O 18 r 20 of the Rules. At the same time, however, the use of the singular noun "action" in O 18 r 20(1) does not conclusively indicate that there can only be one date for the deemed close of pleadings in a

multiparty action. As the appellants quite correctly pointed out, the reference in O 14 r 1 of the Rules to an application for summary judgment against "a defendant" on the ground that "*that* defendant has no defence" [emphasis added] could equally indicate that the timeline for applying for summary judgment against each defendant differs according to when that particular defendant serves its defence. We were thus faced with a genuine instance of statutory ambiguity.

18 In resolving the above ambiguity, we proceeded on the basis that the Rules should be construed and applied so as to give effect to their purpose. Plainly, the Rules, as a whole, are intended to expedite – without sacrificing fairness – the trial of court disputes, whether such disputes involve one party or several parties. On this approach, it cannot be seriously gainsaid that the Rules contemplate *separate* timelines and directions being made in relation to each party in a multiparty action. They do not envisage the application of a *single set* of timelines to all the parties regardless of:

(a) the number of parties involved;

(b) when each party is added to the action;

(c) where each party is located; and

(d) when each party is served.

19 The deadlines for a defendant to enter an appearance and to serve its defence depend wholly on when the writ is served on that particular defendant. These timelines can vary enormously for different defendants depending on whether the defendant concerned is served within or out of jurisdiction. Likewise, the deadline for each plaintiff in a multiparty suit to file its reply depends on when the plaintiff in question is served with the defence (see O 18 r 3(4) of the Rules, which provides that "[a] reply to *any* defence must be served by the plaintiff before the expiration of 14 days after the service on him of *that* defence" [emphasis added]). Unrelated defendants in a multiparty suit may also raise substantively different defences at different times depending on when and where they are served with the writ. Indeed, some defendants, depending on the nature of the claim(s) mounted against them, may have defences and/or counterclaims which are incompatible with those of other defendants in the same suit. As such, it would be artificial, to say the least, to unthinkingly amalgamate the different timelines which may arise in a multiparty scenario and impose a single set of consolidated timelines across the board on all the defendants or, as the case may be, all the plaintiffs.

20 In addition, to hold that the pleadings in a multiparty action are deemed to be closed only 14 days after either the last defence (if O 18 r 20(1)(*b*) of the Rules applies) or the last reply (if O 18 r 20(1)(*a*) applies) is served may prejudice defendants who served their defences earlier. If pleadings remain open until 14 days after the last defence is served by a defendant in the action, the plaintiff could conceivably wield an undue strategic and timing advantage by controlling the progress of the proceedings. For instance, the plaintiff could deliberately refrain from serving the writ on one of the defendants so as to keep the pleadings open and thereby extend the time frame for making an O 14 application (see in this regard the time limit prescribed by O 14 r 14 as set out at [6] above). Clearly, in a multiparty scenario, the Rules do not intend to give the plaintiff the right to subject some of the defendants to uncertain timelines based on when it actually serves the writ on the other defendants. It must logically follow that, in such a situation, as between a plaintiff and a defendant, the pleadings are deemed to be closed as between *that plaintiff* and *that defendant* – and those parties only – depending on when the former serves its reply (according to O 18 r 20(1)(*a*)) or when the latter serves its defence (according to O 18 r 20(1)(*b*)). As between these two parties, the date on which

the pleadings are deemed to be closed does not depend on when the other defendants in the suit serve their respective defences or when the other plaintiffs serve their respective replies.

21 In the present suit, the writ of summons was filed on 26 July 2005. It was served on 1 August 2005 on the third to the seventh appellants, which entered their appearance on 22 August 2005. The first and the second appellants were served out of jurisdiction by substituted service on 12 August 2005; both of them entered their appearance on 2 September 2005. The writ and the statement of claim were amended only on 31 August 2005 to add the ninth and the tenth appellants as parties to the action. It is not clear when these two appellants were served, but they entered their appearance on 12 September 2005. The eighth appellant was served out of jurisdiction via personal service on 31 October 2005 and entered its appearance on 23 November 2005.

22 The third to the seventh appellants filed their joint defence on 15 September 2005. This was followed by the defence of the ninth and the tenth appellants on 23 September 2005, that of the first and the second appellants on 2 November 2005 and, finally, that of the eighth appellant on 5 December 2005. Therefore, applying O 18 r 20(1)(*b*) as between the respondents and each of the appellants, the pleadings closed in respect of the third to the seventh appellants on 29 September 2005; in respect of the ninth and the tenth appellants, on 7 October 2005; in respect of the first and the second appellants, on 16 November 2005; and in respect of the eighth appellant, on 19 December 2005. The respondents applied for summary judgment against all ten appellants (via SIC 6394/05) only on 20 December 2005. The application was therefore within the stipulated timeline (as laid down in O 14 r 14 of the Rules) *vis-à-vis* the eighth appellant only, and was out of time *vis-à-vis* all the other appellants.

23 The question then arises as to whether a plaintiff applying for summary judgment in a multi-defendant suit where there are different dates for the deemed close of pleadings has to make several O 14 applications so as to stay within the time limit imposed by O 14 r 14 of the Rules. This would no doubt be impracticable for both the parties as well as the court. What then should a plaintiff do when faced with such a situation? More specifically, can the plaintiff apply for an extension of time to file a consolidated O 14 application against all the defendants even though such an application may already be out of time pursuant to O 14 r 14 *vis-à-vis* one or more defendants?

The nature of the timeline prescribed in Order 14 rule 14

24 The suggestion that a plaintiff in a multi-defendant suit has to make multiple summary judgment applications rests on three premises. First, there may be several dates for the deemed close of pleadings if the defendants are served with the writ on different dates. Second, the deadline for applying for summary judgment is tied to the date on which the pleadings are deemed to be closed. Third, this deadline is fixed and cannot be discretionally extended by a court. The first premise can be accepted for now without further comment in view of what we discussed at [18]–[20] above. The second premise is confirmed by the language of O 14 r 14 of the Rules, which provides: "No summons under this Order shall be filed more than 28 days after the pleadings in the action are deemed to be closed." The third premise appears to be based on the High Court's decision in *United Engineers (Singapore) Pte Ltd v Lee Lip Hiong* [2004] 4 SLR 305 ("*United Engineers*") and merits closer scrutiny.

25 In *United Engineers*, the plaintiff's claim was for secret commissions which had allegedly been paid by the second defendant to the first defendant in return for procuring construction projects for the second and the third defendants. On the last day of the period within which it had to apply for summary judgment if it so wished, the plaintiff sought an extension of time to take out an O 14 application against all the defendants. A few days later, the third defendant similarly sought an extension of time to apply for summary judgment on its counterclaim against the plaintiff in respect of

work done under the construction projects in question. In support of its application, the plaintiff argued that before it could apply for summary judgment, it needed to make enquiries with the Attorney-General's Chambers, seek further evidence relating to the first defendant's conviction as well as investigate the documents relating to the various construction projects. It therefore asked for an extension of time until after the Attorney-General's Chambers had responded to its queries. With regard to the third defendant's application for an extension of time, the grounds relied on were that: (a) the case involved voluminous documents; and (b) the third defendant's solicitors had been unable to obtain instructions from the second defendant (a director of the third defendant), who had just returned from an overseas trip.

26 While the assistant registrar's decision on the above applications for extension of time was still pending, the third defendant obtained leave to amend what was said to be a typographical error in its counterclaim by adding "one cent" (see *United Engineers* at [8]) to the amount claimed. Accordingly, the plaintiff was allowed to file an amended reply and defence to the counterclaim. Taking the view that these amendments had re-opened the pleadings and revived their right to apply for summary judgment, both the plaintiff and the third defendant took out fresh O 14 applications without waiting for the outcome of their earlier applications for extension of time. The first defendant then sought to set aside these fresh O 14 applications on the grounds that they were made contrary to O 14 r 14 of the Rules and, furthermore, constituted an abuse of the process of the court as the earlier applications for extension of time had not been determined yet. The first defendant's application was allowed by an assistant registrar, whereupon the plaintiff appealed.

27 Dismissing the plaintiff's appeal, Tay Yong Kwang J held at [29]–[31] of *United Engineers*:

> [A] purposive interpretation of O 14 r 14 [of the Rules] makes it necessary to conclude that *the time bar there is an absolute one and may not be extended by the court.* ...
>
> I would not invoke the inherent powers of the court (see O 92 r 4) to override the clear prohibition in O 14 r 14: "No court should arrogate unto itself a power to act contrary to the Rules" (*per* Chao Hick Tin JA in the Court of Appeal in *Samsung Corp v Chinese Chamber Realty Pte Ltd* [2004] 1 SLR 382 at [12]).
>
> If I am wrong in concluding that the said time bar is an absolute one, I would nevertheless not extend time on the facts of this case. It was not immediately clear what other evidence the plaintiff required from the prosecuting authority besides the first defendant's admission of guilt, his conviction and his admission in respect of the other charges taken into consideration for the purpose of sentencing. In any event, the outcome of [the plaintiff's appeal] does not mean that the plaintiff is deprived of its rights against the defendants.
>
> [emphasis added]

28 We agreed with Tay J that, on the facts of *United Engineers*, there was no reason to extend the time for applying for summary judgment. However, we disagreed with his view that the time limit laid down in O 14 r 14 "is an absolute one" and "may not be extended by the court" (*id* at [29]). The mere existence of a time limit in the Rules cannot, in our view, mean that such time limit is absolute and immutable.

29 In respect of O 14 r 14 of the Rules in particular, this provision was introduced by the Rules of Court (Amendment No 4) Rules 2002 (S 565/2002) on 1 December 2002. (It should be noted that the time frame laid down in O 14 r 14 when it was first introduced was 14 days after the deemed close of pleadings; this was later extended to 28 days by the Rules of Court (Amendment No 2) Rules

2004 (S 671/2004).) The working committee which recommended the insertion of O 14 r 14 ("the Rules Committee") could not have intended this provision to deprive the court of its general discretion to extend time under O 3 r 4(1) of the Rules, which states:

> The Court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorised by these Rules or by any judgment, order or direction, to do any act in any proceedings.

30 Order 3 r 4 reiterates the court's power to extend or abridge time as laid down in para 7 of the First Schedule of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) ("SCJA") read with s 18(2) of that Act. It is useful to set out both provisions here:

> **Powers of High Court**
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> **18**.—(1) The High Court shall have such powers as are vested in it by any written law for the time being in force in Singapore.
>
> (2) Without prejudice to the generality of subsection (1), the High Court shall have the powers set out in the First Schedule.
>
> (3) The powers referred to in subsection (2) shall be exercised in accordance with any written law or Rules of Court relating to them.
>
> …
>
> **FIRST SCHEDULE**
>
> **ADDITIONAL POWERS OF THE HIGH COURT**
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> …
>
> **Time**
>
> 7. Power to enlarge or abridge the time prescribed by any written law for doing any act or taking any proceeding, whether the application therefor is made before or after the expiration of the time prescribed, but this provision shall be without prejudice to any written law relating to limitation.

31 It is plain from the above provisions of the SCJA that the court has the power to grant an extension of time at any point during the proceedings in an action. Order 3 r 4 of the Rules confirms that the exercise of such power is consistent with the Rules. Applied to the present situation, this means that the court has the *prima facie* power to grant an extension of time even for summary judgment applications notwithstanding the expiry of the time limit laid down in O 14 r 14.

32 Further, although we disagreed with Tay J on the nature of the timeline in O 14 r 14 of the Rules (as discussed at [28]–[31] above), we shared his view (at [27] of *United Engineers*) that this provision was not a "written law relating to limitation" within the meaning of para 7 of the First Schedule of the SCJA. The substance – rather than merely the letter – of the law in question

determines whether a statutory provision is a "written law relating to limitation". Order 14 r 14 is not such a law because it relates to the time limit for taking a particular step in proceedings which have already commenced as opposed to the time limit for commencing litigation based on a cause of action. As Tay J correctly pointed out at [27] of *United Engineers*:

> Black's Law Dictionary (7th Ed, 1999), offers one definition of "limitation" to be "[a] statutory period after which a lawsuit or prosecution cannot be brought in court". This definition accords with the purpose of the very wide powers in the said para 7 [*ie*, para 7 of the First Schedule of the SCJA] to extend or to abridge the time for doing any act or taking any proceeding without affecting the substantive rights conferred by statutes such as the Limitation Act (Cap 163, 1996 Rev Ed). The words in question [*viz*, "written law relating to limitation"] relate to the right of action and not to applications (such as O 14 applications) or the steps to be taken within the action.

33 Order 14 r 14 of the Rules is therefore not an exception to either O 3 r 4 of the Rules or para 7 of the First Schedule of the SCJA. Since both para 7 of the First Schedule of the SCJA and O 3 r 4 of the Rules make it amply clear that the court has the power to extend time, there is no need for O 14 r 14 of the Rules to reiterate this power with specific reference to summary judgment applications. The absence of an express provision in O 14 r 14 (and O 14 generally) acknowledging the court's power to extend the time limit therein thus does not in itself detract from the court's statutorily conferred general power to extend time.

34 More fundamentally, the Rules Committee has no power to exclude the discretion conferred on the court by virtue of s 53 of the Interpretation Act (Cap 1, 2002 Rev Ed) (applicable to the Rules by virtue of O 1 r 3), which stipulates:

> **Construction of power of extending time**
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> **53.** Where in any written law a time is prescribed for doing any act or taking any proceeding and power is given to a court or other authority to extend the time, unless the contrary intention appears, the power may be exercised by the court or other authority *although the application for the extension is not made until after the expiration of the time prescribed*.
>
> [emphasis added]

We noted that s 53 of the Interpretation Act contains the qualifying phrase "*unless the contrary intention appears*" [emphasis added]. In this regard, O 14 r 14 of the Rules, despite its imperative language, does not express any "contrary intention" that is incompatible with the court's existing power to grant extensions of time. A mere stipulation of a timeline alone is clearly not enough to evince such an intention; otherwise, every procedural rule which states that a particular step must be taken within a certain period would prevent the court from exercising its power to extend the time frame for taking that step and thereby render the court's power to extend time nugatory. Our view is confirmed by, *inter alia*, the express provision in O 3 r 4(2) of the Rules, para 7 of the First Schedule of the SCJA and s 53 of the Interpretation Act to the effect that the court may grant an extension of time notwithstanding that the application for extension is made only *after* the expiration of the statutorily prescribed time limit. This provision shows conclusively that a statutory prescription as to time frame may always be varied by the court if the latter deems it just to do so. More importantly, O 14 r 14 could not have been intended to deprive the court of its power to extend time. Being subsidiary legislation, the Rules cannot restrict or override those powers of the court that have been statutorily conferred by, *inter alia*, the SCJA.

Exercise of the court's discretion to extend the timeline in Order 14 rule 14

35 How then should the court exercise its discretion to extend the time for filing summary judgment applications? A perusal of the civil procedure rules in other jurisdictions indicates that there are a number of important factors to be considered. For example, under r 3212(*a*) of the New York Civil Practice Law and Rules, a party may move for summary judgment in any action "after issue has been joined". The court may set a date, which must be at least 30 days after the filing of the note of issue, after which no such motion may be made. If no deadline is set by the court, the default time limit of 120 days after the filing of the note of issue applies. Regardless of whether the default time limit or a court-prescribed one applies, that time limit may be extended if "good cause" is shown. To show that there is "good cause" to extend time, the party seeking an extension must establish a satisfactory reason for its delay in applying for summary judgment; a strong showing on the merits of the summary judgment motion is not enough: see *Brill v City of New York* 2 NY 3d 648 (2004). In the UK, there is no time limit for filing summary judgment applications, although, presumably, the costs which may be imposed on a tardy applicant increase dramatically the nearer to trial the summary judgment application is made.

36 In Singapore, as a matter of practice, given the need to maintain litigation discipline and to ensure the efficient implementation of the court's case management processes, the later an O 14 application is made, the less likely it is that the court will sanction reliance on the summary judgment process in the absence of good grounds explaining and justifying the delay. As explained in *United Engineers* ([24] *supra*) at [24]–[25], a significant consideration in this regard is structured and exacting case management:

> However unassailable a plaintiff may believe his case to be, it is common knowledge that a fair number of O 14 applications do not result in judgment. Where such applications do not succeed, the normal course of progress of the action is disrupted. If the unsuccessful plaintiff takes the matter on appeal before a judge in chambers and still fails to obtain summary judgment, the delay in progress becomes more pronounced. Similar delays in the progress of the action result where a defendant succeeds, on appeal, in overturning a decision ordering judgment against him.
>
> It is axiomatic that the longer a case takes, the higher the costs of litigation are likely to be. The O 14 procedure, an effective means of obviating open court trials in cases with unmeritorious defences, should therefore be resorted to at an early stage of the proceedings where the saving in costs of litigation would be most marked. There have been instances where O 14 applications were taken out just before the trial was to commence. Where the case has already progressed to such an advanced stage, it is highly debatable whether or not it would be much more pragmatic to have the finality of an open court trial rather than to have the uncertainty of parallel proceedings by way of an O 14 application with its attendant appeals.

37 The plain objective of O 14 r 14 of the Rules is to ensure that the summary judgment process is invoked at a relatively early stage of the proceedings. Hence, the plaintiff is given only "28 days after the pleadings in the action are deemed to be closed" (see O 14 r 14) to file its O 14 application. In the circumstances, a party seeking to apply for summary judgment out of time must satisfactorily explain its delay so as to show persuasively why it should be allowed to potentially hold back the trial further (which would be the case if it is permitted to make its O 14 application out of time and that application is unsuccessful). In multi-defendant actions such as the present suit, the plaintiff could probably show good cause for granting an extension of time by pointing to the need to wait for the defences of all the defendants to be served before it can properly assess the pros and cons of invoking the O 14 procedure, as well as the greater inefficiencies of making separate summary judgment applications against the various defendants. It would likewise be relevant if the plaintiff

shows that resolving the claims summarily as against some or all of the defendants may obviate the need for a trial altogether. Needless to say, the plaintiff will have to demonstrate that it has proceeded diligently in its conduct of the action.

38 We hasten to add at this juncture that it should *not* be thought that the plaintiff in a multi-defendant action can invariably obtain an extension of time until after all the defendants have served their defence(s) to apply for summary judgment. If that were the case, the outcome would be the same as that which would ensue if the pleadings in a multiparty action are deemed to be closed only 14 days after the last defence is served. This would in effect give the plaintiff the same strategic advantage as that of serving the writ on different defendants at different times (see [20] above), which would not be right. It goes without saying that even in a multi-defendant case, the court must exercise its discretion to extend the deadline laid down in O 14 r 14 by carefully assessing, on the one hand, the efficiencies and the desirability of sanctioning a consolidated summary judgment application against all the defendants and, on the other hand, any prejudice to any of the defendants in respect of which such an application (if it is permitted to be made) would be out of time. This will, of course, in the final analysis, involve a fact-sensitive exercise of discretion. Thus, a plaintiff seeking an extension of time to file its O 14 application would have to account for any undue lapses of time between the various dates on which the writ was served on different defendants, while the defendants resisting the application for extension of time would have to show how they would be prejudiced if the plaintiff were to be allowed to make a late summary judgment application.

3 9 *United Engineers* also correctly indicates (at, *inter alia*, [34] and [42]) that amendments to pleadings do not *automatically* re-open the pleadings so as to revive a plaintiff's right to file an O 14 application. However, it is conceivable that, in some cases, an amendment to the defence or other pleadings may warrant a revival of the plaintiff's right to apply for summary judgment. For example, if an allegation of fraud is pleaded in the original defence but is later withdrawn from the amended defence which is filed and served more than 28 days after the close of pleadings, the plaintiff should, in the normal course of events, be allowed to apply for summary judgment even though the time frame in O 14 r 14 would already have expired. Where there have been substantial amendments to the pleadings, the judicious exercise of the court's discretion to extend the time frame set out in O 14 r 14 may save the parties the trouble and expense of a trial.

The substantive point: Whether there were triable issues of fact and/or law

40 We now turn to the substantive merits of SIC 6394/05. The appellants submitted that there were triable issues as to whether the Documents had been abandoned or converted, and whether they could be held liable for breach of confidence. The respondents, on the other hand, contended that the questions of law in the present suit fell within the ambit of O 14 r 12(1) of the Rules and were thus suitable for determination without a full trial. We decided, without adjudicating conclusively on the merits of each side's case, that the matter should proceed to trial instead of being summarily determined. In *Lim & Tan Securities Pte v Sunbird Pte Ltd* [1992] 1 SLR 258, Chan Sek Keong J (as he then was) held at 265, [22] that "the novelty of the legal issues and also the uncertainty of the factual issues that ha[d] become apparent" warranted a full trial in that case. As this court pointed out in *Tat Lee Securities Pte Ltd v Tsang Tsang Kwong* [2000] 1 SLR 1, the O 14 r 12 procedure is not appropriate where the law relating to the issues in dispute is unclear and more evidence is needed before those issues can be satisfactorily determined. The present suit similarly raised novel legal issues and required a full examination of all the relevant facts. It was thus unsuitable for determination under O 14 r 12.

41 To elaborate, the law on abandonment has not been settled in Singapore. There is no legislation, case law or authoritative academic view on title to or possession of items which have

been disposed of as rubbish. In particular, there is no recent English jurisprudence on this area of the law, and comparative common law decisions provide little by way of consensus or guidance. The positions vary across different jurisdictions, with the courts in Australia, Canada and the US generally recognising, but applying differently, the concept of "divesting abandonment" – *ie*, the abandonment of both ownership as well as possession.

42 Rubbish disposal – the paradigmatic example of "divesting abandonment" – is a necessary and common occurrence in daily life. It is usually regarded as a mundane matter and is taken for granted until a case like the present suit arises. The disposal of rubbish may also raise, as demonstrated by the facts of this case, the issue of protecting the privacy of individuals and business entities. This is a matter of considerable public importance and should not be decided summarily. Furthermore, there are, in our view, several important findings of fact that need to be made before the respondents' claim against the appellants can be properly determined. These factual issues include the contractual terms on which the company engaged to collect refuse from Orchard Towers ("the waste disposal company") provided its services, as well as the relevant arrangements or terms between the respondents and other tenants of Orchard Towers on the one hand and the waste disposal company and/or the managing agent of Orchard Towers on the other hand. The resolution of these factual issues may be necessary to determine precisely which party had ownership or possession of the Documents at the time they were retrieved by the ninth appellant and, accordingly, whether the appellants can be held liable for conversion or even theft. Furthermore, the respondents have in their affidavits suggested that the first to the eighth appellants had not merely retrieved (via the ninth and the tenth appellants) the Documents from the bin centre of Orchard Towers, but had also connived with some of the respondents' employees to procure those documents If these allegations are to be resolved, they must be ventilated and tested at a full trial.

43 In addition, the issues of abandonment and conversion cannot be neatly decoupled from the respondents' allegations of breach of confidence. A close scrutiny of the factual circumstances is necessary before it can be ascertained whether equity may be or has been properly invoked to protect the confidential information allegedly contained in the Documents. It is also significant that the third to the seventh appellants retrieved and made use of the Documents to enforce a judgment against Indah Kiat, a company allegedly related to the respondents (see [3] above). On a full consideration of the facts, the use of the Documents in this manner may present novel questions of law; for instance:

(a) whether, in the case of documents said to contain confidential information, the use of such documents in legal proceedings constitutes a breach of confidence; and

(b) whether, in respect of documents which are arguably protected by the law of confidence, equity will continue to impose an obligation of confidence where the documents are surreptitiously withheld from a party who has a legitimate interest in seeking their disclosure.

All these issues would be more appropriately considered and determined via a trial.

Conclusion

44 Since summary judgment was granted in the court below without considering the above issues, the Judge's decision should, with respect, be set aside. The appellants should have leave to defend. We therefore allowed this consolidated appeal with the costs here and below to be costs in the cause. We also made the usual consequential orders.

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