IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 113

Originating Summons No 1255 of 2017

Between

DFI Engineering Pte Ltd

… *Plaintiff*

And

Mo Mei Jen

… *Defendant*

GROUNDS OF DECISION

[Courts and jurisdiction] — [Judges] — [Transfer of cases]

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DFI Engineering Pte Ltd
v
Mo Mei Jen

[2018] SGHC 113

High Court — Originating Summons No 1255 of 2017
Lee Seiu Kin J
22 January 2018

7 May 2018

Lee Seiu Kin J

1 This was the plaintiff's application under s 17 of the Employment Claims Act 2016 (No 21 of 2016) ("Employment Claims Act 2016") to transfer the defendant's claim from the Employment Claims Tribunal ("ECT") in ECT/487/2017 ("ECT487") to the High Court, and to be tried at the same time as or immediately after High Court suit no 737 of 2017 ("S737") by the same trial Judge. The defendant objected to the application, and after hearing the arguments of both parties I dismissed the plaintiff's application. I now give the reasons for my decision.

Background facts

The parties

2 The plaintiff is a local company involved in the business of wholesale and manufacture of industrial machinery and other related equipment.

3 The defendant, Ms Mo Mei Jen ("Ms Mo"), was employed by the plaintiff from 4 June 2012 to 3 August 2017 as a senior sales administrator, and during such employment she reported to and took instructions from one Lim Boon Siang ("Daniel Lim"), who was the general manager of the plaintiff company.

High Court Suit No 737 of 2017

4 The plaintiff commenced S737 on 11 August 2017 against 12 parties, including Daniel Lim and the defendant. The plaintiff claimed, *inter alia,* that Daniel Lim had fraudulently and/or wrongfully breached his fiduciary and contractual duties to the plaintiff. It was alleged that Daniel Lim had engaged in a conspiracy with the other defendants in S737 to defraud the plaintiff and fraudulently divert the contracts and business of the plaintiff to competing businesses. These competing businesses were incorporated by Daniel Lim, and bore names similar to the plaintiff, such as DFI Technologies Pte Ltd ("DFIT").

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5 As against the defendant Ms Mo, who was the fourth defendant in S737, it was alleged that she had knowingly and dishonestly assisted in the conspiracy of the other defendants and Daniel Lim's breach of fiduciary duties.

The ECT claim in ECT/487/2017

6 The defendant tendered her resignation on 2 July 2017 by way of email to Daniel Lim (who was the plaintiff's general manager at the time) giving one month's notice. She left the plaintiff company on 3 August 2017. On 15 August 2017, four days after the plaintiff filed the writ in S737, the defendant submitted a mediation request to the Commissioner for Labour pursuant to Part 2 of the Employment Claims Act to claim for her salary for the final month of her employment with the plaintiff as well as reimbursement for expenses incurred. The claims submitted to mediation with the Tripartite Alliance for Dispute Management ("TADM") were as follows:

(a) Reimbursement for expenses incurred while carrying out official duties.

(b) Reimbursement for medical expenses for June and July 2017.

(c) Payment of salary for July 2017.

7 The parties were unable to resolve the dispute via mediation and the defendant alleged that the plaintiff did not attend further mediation sessions

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after the first session. There being no settlement reached, the defendant proceeded to file her claim with the ECT on 13 October 2017.

8 Four days later, on 17 October 2017, the plaintiff filed an amended statement of claim in S737 to include *inter alia* an allegation that the defendant was not entitled to payment of her salary for July 2017, the subject matter of her claim in the ECT. The amended paragraph states the following [(ii) at p 16]:

> Insofar as there are or will be any allegations by the Defendants of non-payment or short payment by the Plaintiff of salary of the 1st, 4th, 5th, 11th and 12th Defendants (which is not admitted), the Plaintiff avers that these Defendants are not entitled to payment of such salary given that they had spent their working hours performing work for DFIT instead of the Plaintiff from the Plaintiff's premises as well as DFIT's premises. To this end, there was total and/or substantial failure of consideration on the parts of the 1st, 4th, 5th, 11th and 12th Defendants (as the case may be), and corresponding loss to the Plaintiff of their services. Further or in the alternative, the Plaintiff is entitled to set off any salary owing (which is not admitted) against the amounts payable to it in compensation or by way of an account of profits as prayed for herein at paragraph 20 below

9 At the hearing of this application, the reimbursement claim for item (a) in [6] above had already been paid by the plaintiff to the defendant. Only the claims in item (b) and (c) remained. The defendant claimed a sum of $3,500 as salary owed under item (c), and a sum of $167.57 as medical expenses under item (b). The total amount claimed by the defendant amounted to $3,667.57.

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The parties' cases

The defendant's case

10 The defendant's case was that she had performed work during the month of July 2017, and should be entitled to her salary first without set-off until the plaintiff has succeeded in its claim in S737. The defendant, who acted in person, objected to the transfer of proceedings, apparently on the ground that the set-off claim in S737 as set out at [8] above was added as an afterthought and subsequent to the filing of her claim in ECT487.

The plaintiff's case

11 The plaintiff's two arguments, which are in many aspects overlapping, can be summarised as follows.

12 Firstly, the ECT was established to provide for a forum to deal with simple matters of employment claims and not complex cases such as the present. The complexities of the claim in ECT487 arise because the claim is in essence inseparable from the allegations in S737. The plaintiff alleged that the defendant was actually working for DFIT rather than the plaintiff during the month of July 2017. She was therefore not entitled to her salary and expenses incurred during that month due to a failure of consideration and/or a right of set-off. As such, this was not a straightforward case of unpaid wages that can be dealt with easily by the ECT, since a determination of whether the defendant is entitled to

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her salary arises out of the same complex factual matrix giving rise to the allegations in S737.

13 Secondly, and relying on established principles relating to the consolidation of cases under O 4 r 1 of the Rules of Court (Cap 332, R 5, 2014 Rev Ed)("the ROC"), the cases in S737 and ECT487 should be tried together or one after the other by the same Judge as they give rise to common questions of fact and law. Specifically, whether or not the defendant had been performing work for DFIT instead of the plaintiff and whether the defendant had used the plaintiff's resources for the benefit of DFIT were common issues for determination in both cases. Transferring the claim in ECT487 to the High Court would prevent a duplication of resources in terms of adducing the same evidence and producing the same witnesses in two different forums, and would also prevent an outcome where the adjudication in the two forums gave rise to inconsistent results.

14 The plaintiff also disagreed with the defendant's assertion that the set-off claim in S737 was added belatedly, as the original statement of claim contained at para 15(y) the allegation that "at all material times, Daniel Lim and his co-conspirators used the employees and resources of the Plaintiff to manage and operate the business, operations and affairs of DFIT and DFIT Malaysia", which according to the plaintiff included an allegation that the defendant was working for DFIT instead of the plaintiff at the material time, albeit in rather unspecific terms. In the alternative, the plaintiff also argued that whether or not

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the set-off claim was added before or after the filing of the claim in ECT487 was irrelevant, as the more important issue was whether there were common questions of fact and law between the two cases at this present point of time.

My decision

15 The present application was made pursuant to s 17 of the Employment Claims Act 2016, which stipulates as follows:

> 17. — (1) Where it appears to an appropriate court, on the application of a party to any proceedings before a tribunal, that there is sufficient reason for those proceedings, or a counterclaim in those proceedings, to be dealt with by that court, that court may order those proceedings or that counterclaim (as the case may be) to be transferred to that court.

16 The question central to the determination of this present application would hence be what constitutes "sufficient reason" for the transfer of the proceedings from ECT487 to this court.

17 It is unsurprising that there is a dearth of case law pertaining to s 17 or any equivalent provision, since the Employment Claims Act 2016 only came into effect in April 2017. The plaintiff in its written submissions had made reference to other provisions relating to the transfer of proceedings from a tribunal to a court, such as s 20 of the Community Disputes Resolution Act 2015 (No 7 of 2015) and s 10 of the Small Claims Tribunals Act (Cap 308, 1998 Rev Ed), but since it is clear that these provisions pertain to the transfer of claims which are beyond the jurisdiction of the relevant tribunals, I did not find these

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references to be helpful. It is not disputed that the claim in ECT487 is not outside of the jurisdiction of the ECT.

18 The plaintiff had also referred me to various principles from case law governing the consolidation of cases pursuant to O 4 r 1 of the ROC, emphasising in particular the need to save time and costs especially where different actions involve common issues of fact and law such that there would be a substantial overlap in the witnesses and evidence to be adduced, and also the need to prevent inconsistent judgments. I found these to be relevant guiding principles in the present case, although it must be kept in mind that transferring proceedings from the ECT to the High Court also entails different considerations that may not be engendered by the consolidation of two causes in the same court.

19 In this regard, it is useful to consider the purpose for which the ECT was set up. At the Second Reading of the Employment Claims Bill (*Singapore Parliamentary Debates, Official Report* (16 August 2016) vol 94*)*, Minister for Manpower Mr Lim Swee Say said the following in response to questions on legal representation in the ECT:

> The reason why we insist on no legal representation at ECT is because we think this will work to the disadvantage of the workers. Because if we allow legal representation, it is more likely that the employer will be able to afford legal representation as compared to the employee. But, more importantly, as I have mentioned, we want the ECT to be a very affordable, very expeditious way of resolving disputes. Any

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> complex cases that require legal representation, they should go to the Civil Court rather than come to the ECT. …

20 The plaintiff cited part of the above speech in support of its position that complex cases should be transferred to the High Court as they were not contemplated to come within the purview of the ECT. I do not disagree that certain complex disputes might be better suited for resolution in courts, but it is clear from the Parliamentary debates that the greater concern underpinning the creation of the ECT was to facilitate the resolution of salary disputes without requiring employees to resort to costly litigation in regular courts. The requirement for parties to go through mandatory mediation, the prohibition of legal representation and the prescribed claim limit of $20,000 (or $30,000 in certain cases) are all consistent with this understanding of the ECT's purpose.

21 It would appear from the facts that there are indeed common issues of fact and law between the two claims, and that at least theoretically there would be some cost savings if the same issues and arguments were ventilated in one forum instead of two.

22 That being said, it must be kept in mind that the transfer of proceedings from a tribunal to a court would entail costs as well. If the claim in ECT487 were to be transferred to the High Court, both parties would have to incur further costs to amend pleadings. This is especially the case here since the defendant has not included a counterclaim for her unpaid salary in S737. The plaintiff would then have to amend its reply and defence to counterclaim. A second factor

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in the present case is that S737 involves 12 defendants represented by three different sets of solicitors with the quantum of damages claimed likely to be in excess of $500,000. Transferring ECT487 to S737 would mean involving 11 other defendants in an extended trial over an issue of no relevance to them and in which the claim is only for $3,667.57.

23 As far as the defendant is concerned, requiring her to bring her claim in the High Court when she is perfectly entitled to do so in the ECT would mean that a decision in her favour would be a pyrrhic victory as the additional costs to her would be in excess of the amount she is claiming. Even from the plaintiff's perspective, any potential cost savings from not having to adduce the same evidence in different forums would likely be overshadowed by the additional costs of responding to a counter-claim. As such, the additional costs involved to everyone concerned, including the plaintiff, the defendant and the other defendants in S737, would be way in excess of the amount of the claim in ECT487.

24 As such, in view of the small quantum of the defendant's claim in ECT487 in relation to the plaintiff's claims in S737, it would be expedient to permit the defendant's claim to be dealt with by the ECT. The fact that common issues of fact and law are present in the two suits does not constitute "sufficient reason" for ordering a transfer of proceedings in view of the circumstances of the case, namely the overwhelming savings in costs for not just the defendant and the plaintiff but also for the 11 other defendants in S737.

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25 For the foregoing reasons, I dismissed the plaintiff's application for transfer of proceedings under s 17 of the Employment Claims Act 2016. As the defendant was self-represented, I made no order as to costs.

Lee Seiu Kin
Judge

Yeo Jianhao, Mitchell (Rajah & Tann Singapore LLP) for the plaintiff;
The defendant in person.

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