IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA 11

Civil Appeal No 133 of 2020 and Summons No 108 of 2020

Between

Sameer Rahman

… *Appellant*

And

Nomura Singapore Limited

… *Respondent*

In the matter of Suit No 507 of 2019

Between

Sameer Rahman

… *Plaintiff*

And

Nomura Singapore Limited

… *Defendant*

EX TEMPORE JUDGMENT

[Civil Procedure] — [Pleadings] — [Striking out]

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Sameer Rahman
v
Nomura Singapore Limited

[2021] SGCA 11

Court of Appeal — Civil Appeal No 133 of 2020 and Summons No 108 of 2020
Tay Yong Kwang JCA and Belinda Ang JAD
22 February 2021

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Tay Yong Kwang JCA (delivering the judgment of the court *ex tempore*):

Introduction

1 The appellant, Sameer Rahman, is the plaintiff in Suit No 507 of 2019 ("Suit 507") and the respondent, Nomura Singapore Ltd, is the defendant. The respondent applied unsuccessfully to the Assistant Registrar of the Supreme Court ("the AR") to strike out the appellant's Statement of Claim ("SOC"). The respondent then appealed to the High Court judge ("the Judge") against the dismissal of its application.

2 The Judge allowed the respondent's appeal in large part and struck out various parts of the appellant's SOC. The appellant appeals against the Judge's decision. The appellant also applies in Summons No 108 of 2020 ("SUM 108") to the Court of Appeal to amend portions of his SOC.

The Factual Background

3 The appellant was a former Vice President of the respondent, a financial institution regulated by the Monetary Authority of Singapore ("MAS"). During his employment with the respondent, the appellant was carrying out an activity regulated by the MAS pursuant to the Securities and Futures Act (Cap 289, 2006 Rev Ed) ("SFA") and the Financial Advisers Act (Cap 110, 2007 Rev Ed) ("FAA"). Accordingly, the MAS had to be satisfied that the appellant was a "fit and proper" person having regard to the MAS' Guidelines on Fit and Proper Criteria (Guideline No: FSG-G01) ("Fit and Proper Guidelines").

4 Pursuant to the MAS' Notice No FAA-N14 ("FAA Notice") and Notice No SFA 04-N11 ("SFA Notice"), the respondent was required to report instances of misconduct falling within the following categories to the MAS:

(a) Acts Involving Fraud, Dishonesty or Other Offences of a Similar Nature;

(b) Acts Involving Inappropriate Advice, Misrepresentation or Inadequate Disclosure of Information (under the FAA Notice), as well as Acts Relating to Market Conduct Provisions under Part XII of the SFA (under the SFA Notice);

(c) Failure to Satisfy the Fit and Proper Guidelines; and

(d) Other Misconduct.

Only categories (c) and (d) feature in this appeal. We refer to them as the "Fit and Proper Category" and "Other Misconduct Category" respectively.

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5 On 14 March 2018, the respondent notified the appellant in writing that his employment would terminate immediately ("the Termination Notice"). The Termination Notice stated that this was due to the appellant's "recent, multiple breaches of client confidentiality since the written warning issued to you in October 2017". It was accepted by the parties that this was a reference to a letter issued in November 2017. It went on to state that "As a salesperson, client confidentiality is a core requirement of your job and we consider this to be a fundamental breach of your employment terms with Nomura". Paragraph 8 of the Termination Notice has particular significance in this appeal. It stated as follows:

> Nomura will also notify the Monetary Authority of Singapore regarding the cessation of your employment as required by law. A misconduct report will also be filed with the MAS in accordance to the MAS Fit and Proper Guidelines.

6 On 19 March 2018, the respondent filed a misconduct report with the MAS ("the MAS report"). This report was not filed under the Fit and Proper Category but under the Other Misconduct Category. In the MAS report, the respondent provided details of the appellant's alleged breaches of client confidentiality and stated that the respondent considered the breaches "constituted serious misconduct particularly given the prior written warning issued to him in October 2017" and therefore decided to "summarily dismiss the employee on 14 March 2018".

7 The MAS report was given to the appellant only on 15 June 2018. During the interim period (*ie,* from the time of the appellant's termination on 14 March 2018 until 15 June 2018), the appellant attended interviews with three prospective employers, Credit Suisse SG, ANZ SG and Citigroup Private Bank SG. He informed them that the respondent "had filed" a misconduct report

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against him under the Fit and Proper Category. He did not receive any offers from them.

8 In September 2018, the appellant managed to find alternative employment. However, this came with a pay cut of roughly 70% from what he used to receive at the respondent.

9 On 21 May 2019, the appellant commenced Suit 507. On 13 February 2020, the respondent took out an application under O 18 rr 19(1)(*a*) – 19(1)(*d*) of the Rules of Court (Cap 322, R 5, 2014 Ed) and/or the inherent jurisdiction of the court to strike out the entirety of the appellant's claim. This was dismissed by the AR but the respondent's appeal to the Judge was allowed in large part.

10 The appellant's action against the respondent relied on two main grounds. First, he claimed that he was dismissed wrongfully by the respondent. He denied the alleged breaches of client confidentiality and averred that he was dismissed for "collateral reasons" (*ie,* for reporting unlawful trading activity by other employees of the respondent and for falling out with an Executive Director over her alleged improper claim of the appellant's sales credit as hers) ("Wrongful Dismissal Claim"). Second, he claimed that the respondent communicated misinformation negligently to him in the Termination Notice which he felt obliged to disclose to prospective employers and did so to several prospective employers after the termination of his employment. This caused him to lose the opportunity to obtain equivalent employment at a salary which was on par with what he previously received at the respondent. It also resulted in serious injury to his personal and business reputation and hence financial loss ("Negligent Misinformation Claim").

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11 The Judge struck out part of the Wrongful Dismissal Claim and the entire Negligent Misinformation Claim. He allowed the Wrongful Dismissal Claim to continue insofar as it concerned the alleged breaches of client confidentiality.

12 On appeal before us, the appellant seeks to reinstate the majority of his struck-out claims. He argues that the Judge was wrong to strike out the references to "collateral reasons" in the Wrongful Dismissal Claim just because the respondent had sought to justify his termination solely on the basis of the appellant's alleged breaches of client confidentiality. He alleges that the "collateral reasons" were the true reasons for his summary dismissal and they were therefore linked inextricably to the alleged breaches of client confidentiality. He submits that he has an arguable case in respect of the Negligent Misinformation Claim and that it ought not to have been struck out. Lastly, the appellant contends that his contractual claim for bonus, which was struck out as it was conceded that he was not entitled to a bonus, can be re-housed under the Negligent Misinformation Claim through the amendments sought in SUM 108.

Our Decision

13 We will deal with this appeal on the basis of the three key issues identified by the appellant in his submissions at para 7. They are:

(a) whether the appellant is entitled to run a positive case that his employment was terminated for reasons other than that stated that by the respondent;

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(b) whether the appellant has an arguable case that he suffered loss and damage as a result of the respondent's mistake in the Termination Notice; and

(c) whether the appellant's claim for a bonus based on his contract can be brought under the assessment of damages for his Negligent Misinformation Claim instead, by way of an amendment to the SOC.

We shall refer to these as Issues A, B and C.

Issue A

14 We see no reason why the appellant should not be allowed to plead that his dismissal was not for reason X as claimed but for reason Y. It adds to the strength of his allegations to be able to show the court what he says the respondent's true motive for his summary dismissal was. Of course, this adds to his burden of proof in that he has additional matters to prove at the trial.

15 The "collateral reasons" may be of no consequence to the final outcome eventually if the breach of client confidentiality ground is established by the respondent. However, they may still have relevance if the stated ground for his summary dismissal cannot be made out by the respondent because they would show an abuse of power by the respondent.

16 We think, however, that the appellant was wrong in submitting that the warning letter in November 2017 was part of the reasons for his summary dismissal. Clearly, the context shows that the only ground for termination was the alleged "recent, multiple breaches of client confidentiality" which took place after the said warning letter. The next sentence again shows clearly that it was

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the breach of client confidentiality that was in issue because "As a salesperson, client confidentiality is a core requirement of your job and we consider this to be a fundamental breach of your employment terms with Nomura". The warning letter was referred to merely to show that the appellant had been warned a few months earlier concerning some other incidents.

Issue B

17 On the Negligent Misinformation Claim, we think the arguments about whether the appellant had told the prospective employers that the MAS report "would be filed" or "had been filed" were needlessly pedantic and ultimately unfruitful. We do not think it is fair or even useful to draw the line between an expression of intent and a completed act in the circumstances here. The fact is that the MAS report was definitely going to be filed (see "A misconduct report will also be filed with the MAS" in para 8 of the Termination Notice) and the reality was that it was filed with the MAS on Monday, 19 March 2018, five days after the Termination Notice. There was never any issue about whether the respondent was still contemplating whether to file the MAS report. We therefore see little point in these grammar gymnastics.

18 We do not agree with the Judge that prospective employers would not be deterred from offering employment simply because of the MAS report against the appellant. It is highly reasonable and logical that a prospective employer may not want to employ someone with a blemish on his professional record bearing in mind the regulatory requirement that, depending on the position of a prospective employee, the criteria in MAS' Fit and Proper Guidelines have to be satisfied. However, whether the prospective employers held this view is a matter of evidence for the appellant to prove. He has to show

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that the prospective employers were deterred by the information about the MAS report and that they would otherwise have offered him a job with a certain level of remuneration. Foreseeably, it will not be an easy task for the appellant to prove these facts but it is something that he has taken upon himself to prove. It is clear that a weak case does not qualify as a clearly unsustainable case that ought to be struck out.

19 The appellant apparently misread paragraph 8 of the Termination Notice and misstated to the prospective employers that the ground in the MAS report by the respondent would be under the "Fit and Proper Category" when it was actually under the "Other Misconduct Category". However, we doubt these grounds would be viewed differently by the prospective employers because either ground would still result in a blemish on the appellant's professional record. What is material is probably the factual situation that warranted making a report to the MAS.

20 In spite of what we have set out above, we think the striking out of the Negligent Misinformation Claim was still justified. For the first two prospective employers, the appellant pleaded that he was required by MAS policy or its guidelines to disclose that the MAS report had been filed against him. Whether the disclosure to the third parties resulted from the appellant's belief that he was under an obligation to do so or whether it was entirely voluntary, the disclosure appeared unqualified in the SOC. Since the appellant believed that his summary dismissal was wrongful, he could have and should have informed the prospective employers that he denied the respondent's allegations against him or that he was contemplating legal action against the respondent for wrongful dismissal and that anything stated in the MAS report would be challenged and

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disproved by him. After all, as shown in the first sentence of the respondent's reply dated 15 June 2018 to the appellant's then solicitors, KhattarWong LLP, the appellant had already taken legal advice by 18 May 2018 at the latest.

Issue C

21 Since we think that the Negligent Misinformation Claim should remain struck out, we need not deal with this issue about whether the appellant's claim for loss of bonus can be parked under this claim.

SUM 108

22 We do not think the Court of Appeal should concern itself with an application for amendment of pleadings at an appeal. If the appellant was of the view that his SOC was unassailable and that there was no need for amendments at the hearing of the striking out application, then his pleading stands or falls by the Judge's decision. The only issue on appeal would be whether the Judge was wrong in striking out the SOC or any part thereof. The Court of Appeal should not be the fallback for a belated application to remedy pleadings in the event that it affirms the striking out.

23 In any case, after announcing his decision on the striking out application, the Judge directed that "If the plaintiff wishes to make other amendments, he should either obtain consent from the defendant or make the necessary application, which will then be dealt with on its merits" (see 2 ACB 133). We agree entirely with the Judge that this is the correct course to take. The application before us amounts to an unwarranted leapfrog application that bypasses the Registrar and the Judge. As we have stated elsewhere, the Court

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of Appeal is not to be treated as a second trial court to argue new issues or to remedy matters that ought rightly to have been canvassed before the trial judge.

Our orders

24 We allow the appeal on Issue A. We dismiss the appeal on Issues B and C.

25 For SUM 108, we make no order. As directed by the Judge, the parties should go before him if issues arise concerning consequential amendments or if they wish to make other amendments.

26 On costs, the appellant has submitted his costs at $25,000 and disbursements at $8,800 while the respondent has submitted its costs at $27,000 and disbursements at $1,757.15. In the light of what we have decided above, we order the appellant to pay the respondent $20,000 costs inclusive of disbursements. This is because he has succeeded in one issue which is relatively less important than the Negligent Misinformation Claim which he fails in, together with the consequence that the issue about the loss of bonus claim has become irrelevant. Further, the appellant also took out a belated application for amendment of his SOC before us, necessitating some work to be done by the respondent. Our costs order also takes into account the fact that we have disagreed with the Judge's views on the minor issues raised by the respondent before him.

27 The usual consequential orders are to apply.

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28 In the light of our decision above, the parties agree that the Judge's costs order in favour of the respondent should be reduced from $22,000 (inclusive of disbursements) to $16,000 (inclusive of disbursements). We so order.

Tay Yong Kwang
Justice of the Court of Appeal

Belinda Ang
Judge of the Appellate Division

Eugene Singarajah Thuraisingam, Chooi Jing Yen and Hamza Zafar Malik (Eugene Thuraisingam LLP) for the appellant;
Ong Tun Wei Danny, Ng Hui Ping Sheila, Yam Wern-Jhien and Lim Tiong Garn Jason (Rajah & Tann Singapore LLP) for the respondent.

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