IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2024] SGCA 54

Court of Appeal / Civil Appeal Nos 12, 13, 14 and 15 of 2024

Between

(1) Lim Oon Kuin
(2) Lim Chee Meng
(3) Lim Huey Ching

… *Appellants*

And

Rajah & Tann Singapore LLP

… *Respondent*

In the matter of Originating Summons Nos 666 and 704 of 2020 (Registrar's Appeals Nos 90, 91, 92 and 93 of 2023)

Between

(1) Lim Oon Kuin
(2) Lim Chee Meng
(3) Lim Huey Ching

… *Applicants*

And

Rajah & Tann Singapore LLP

… *Respondent*

GROUNDS OF DECISION

Version No 1: 25 Nov 2024 (12:13 hrs)

[Abuse of Process — *Henderson v Henderson* doctrine]
[Civil Procedure — Amendments]
[Civil Procedure — Striking out]
[Res Judicata — Extended doctrine of res judicata]

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Lim Oon Kuin and others
v
Rajah & Tann Singapore LLP and other appeals

[2024] SGCA 54

Court of Appeal — Civil Appeal Nos 12, 13, 14 and 15 of 2024
Sundaresh Menon CJ, Tay Yong Kwang JCA and Judith Prakash SJ
31 July, 13 September 2024

25 November 2024

Tay Yong Kwang JCA (delivering the grounds of decision of the court):

Introduction

1 These appeals formed part of a long-running action commenced by the appellants against their former solicitors, who are the respondent, to prevent them from acting for two companies in which the appellants were key management personnel. In these appeals, the appellants appealed against the decision of the Judge of the General Division of the High Court (the "Judge") in which he dismissed the appellants' applications to amend HC/OS 666/2020 ("OS 666") and HC/OS 704/2020 ("OS 704") (collectively, the "OSes") on the ground that the applications were an abuse of the process of court and in which he allowed the respondent's applications to strike out the two Originating Summonses.

2 These appeals raised the novel issue of whether and how the rule in *Henderson v Henderson* (1843) 3 Hare 100 ("*Henderson*") could be applied within the same action. More specifically, whether it could apply in a situation where a prior determination on the merits has not yet been made.

3 We heard and allowed the appeals. We were not persuaded that the *Henderson* doctrine could apply in a situation where there has been no prior determination in which the relevant issue could and should have been raised. We also did not consider the appellants' amendment applications to be an abuse of the process of court. We therefore allowed the appellants' proposed amendments and directed them to file pleadings setting out their claims against the respondent. We now explain our decision.

Background

The Originating Summonses

4 The appellants are Mr Lim Oon Kuin, Mr Lim Chee Meng ("LCM") and Mdm Lim Huey Ching ("LHC"). Since the early 1990s, the respondent, Rajah & Tann Singapore LLP, had advised and acted for the appellants and the group of companies that they were key personnel in (the "Group Companies"). The Group Companies provided oil trading services, including trading, shipping, blending and storage services. Two companies within this group were material for these appeals. They were Ocean Tankers (Pte) Ltd ("OTPL"), a ship management company, and Hin Leong Trading (Pte) Ltd ("HLT"), an oil trading company.

5 Following financial difficulties for the Group Companies in the first half of 2020, OTPL and HLT applied for and were placed under interim judicial management. The interim judicial managers (the "IJMs") of OTPL and HLT

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retained the respondent as their solicitors. In July 2020, LCM and LHC caused OTPL and HLT to file the OSes against the respondent. Initially, the OSes contained only a claim to restrain the respondent from representing OTPL and HLT and/or their IJMs, judicial managers and liquidators (collectively, the "Insolvency Representatives"), on the basis that confidential information and documents in the respondent's possession would be misused in the respondent's capacity as solicitors for OTPL, HLT and/or the Insolvency Representatives. OTPL and HLT were therefore the original applicants in OS 666 and OS 704 respectively.

6 On 5 October 2020, the respondent applied in HC/SUM 4317/2020 and HC/SUM 4318/2020 (the "Previous Striking Out Applications") to strike out the OSes. The OSes were struck out at first instance in *Ocean Tankers (Pte) Ltd (under judicial management) v Rajah & Tann Singapore LLP and another matter* [2021] SGHC 47 ("*R&T (Striking Out) (HC)*"). This was upheld on appeal in *Hin Leong Trading (Pte) Ltd (in liquidation) v Rajah & Tann Singapore LLP and another appeal* [2022] 2 SLR 253 ("*R&T (Striking Out) (CA)*"). The basis for the striking out was that although LCM and LHC were directors of OTPL and HLT at the material time, they had been divested of their powers as directors upon the appointment of the IJMs and therefore could not commence and maintain the OSes: *R&T (Striking Out) (HC)* at [27] and [45] and *R&T (Striking Out) (CA)* at [25].

7 However, the appellants applied in HC/SUM 4429/2020 (in OS 666) and HC/SUM 4417/2020 (in OS 704) (collectively, the "Joinder Applications") to join themselves as parties in the OSes. The Joinder Applications were disallowed at first instance in *Ocean Tankers (Pte) Ltd (under judicial management) v Rajah & Tann Singapore LLP and another matter* [2021] SGHC

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144 but allowed on appeal in *Lim Oon Kuin and others v Rajah & Tann Singapore LLP and another appeal* [2022] 2 SLR 280.

8 By this time, nearly two years had passed since the OSes were first filed in July 2020. After being joined as parties in the OSes, the appellants obtained permission on 7 June 2022 to amend the OSes to replace OTPL and HLT with themselves as the applicants. The result was that the amended OSes had identical applicants. The amended OSes maintained the single claim for final injunctive relief against the respondent.

The Amendment Applications

9 In August 2022, the parties engaged in "without prejudice" discussions in an attempt to settle the OSes. When this did not succeed, the respondent's solicitors sent a letter on 12 September 2022 (the "12 September Letter"): (a) informing the appellants of the respondent's disengagement from OTPL, HLT and the liquidators (by this time, OTPL and HLT were already in liquidation); and (b) asking the appellants to discontinue the OSes.

10 When no substantive response to the 12 September Letter was received, the respondent applied on 22 September 2022 to strike out the OSes (the "Striking Out Applications") on the basis that the 12 September Letter resulted in a full resolution of the appellants' claims in the OSes and that the continuation of the OSes would serve no practical benefit. On 25 October 2022, the appellants filed applications to amend the OSes (the "Amendment Applications").

11 The Amendment Applications proposed the following three groups of amendments (collectively, the "Proposed Amendments"):

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(a) First, a prayer that declarations be made to the effect that: (i) the respondent had received documents from the appellants and the Group Companies in circumstances importing an obligation of confidence; (ii) the respondent had acted in breach of confidence and breach of its duties and obligations to the appellants and the Group Companies; and (iii) the respondent's conduct gave rise to an actual or reasonable perceived risk that the proper administration of justice would be prejudiced.

(b) Second, prayers that: (i) the respondent provide the appellants with lists setting out the confidential documents allegedly provided to the respondent and persons who had access to these documents; (ii) the respondent and any other party who received the confidential information be restrained from using for its own benefit or gain or from revealing to any other party, any confidential information and/or documents that had come to the respondent's knowledge during its engagement by the Group Companies; and (iii) the respondent deliver up and procure any other party to deliver up all of the confidential information/documents to the appellants.

(c) Third, prayers which sought orders that the respondent disgorge the fees it received for its representation of OTPL, HLT and the Insolvency Representatives and/or pay damages to the appellants owing to a breach of confidence.

Decision of the High Court

12 At first instance, the Assistant Registrar (the "AR") found that the Amendment Applications were an abuse of the process of court as the appellants had made them with the predominant purpose of vexing the respondent and/or pursuing strategic or litigation advantages against persons who were not parties

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to the OSes. The AR therefore disallowed the Proposed Amendments and struck out the OSes, subject to an undertaking by the respondent that it would not act for or advise OTPL, HLT and/or the Insolvency Representatives. This undertaking was provided by the respondent on 8 May 2023. The appellants appealed against the AR's decision.

13 On appeal, the Judge upheld the AR's decision. First, the Judge found that the Amendment Applications were filed in general abuse of process. They were not necessary to determine the real issues between the parties since the appellants had consistently maintained (until the filing of the Amendment Applications) that their sole interest in the OSes was to obtain final injunctive relief against the respondent. The relief sought was rendered redundant by the 12 September Letter, under which the respondent had ceased to advise or act for OTPL, HLT and their liquidators. The late stage at which the Amendment Applications were filed, coupled with the fact that they were filed immediately after the Striking Out Applications were made, indicated to the Judge that the appellants did not genuinely wish to pursue the reliefs sought in the Proposed Amendments and had filed the Amendment Applications in an improper attempt to keep the OSes alive for collateral purposes. This lack of *bona fides* was further demonstrated by the fact that the appellants knowingly advanced the Proposed Amendments under the Originating Summons ("OS") process when it should have been patently clear that the matters introduced by the Proposed Amendments were ill-suited for that process.

14 Second, the Judge held that the Amendment Applications constituted the more specific form of abuse of process laid out in *Henderson*. The Judge found that the *Henderson* doctrine, although traditionally applied in situations where there has been successive litigation, could apply within the same litigation where a litigant seeks to introduce new points at a late stage of proceedings

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when it ought to have done so earlier. Applying the *Henderson* doctrine to the facts, the Judge observed that the claims in the Proposed Amendments were based on the same set of underlying facts existing when the OSes were commenced some years ago. The appellants ought to have raised these issues at a much earlier stage. In the circumstances, it was clear that the Amendment Applications were filed merely as a reaction to the respondent's disengagement from OTPL and HLT in an attempt to preserve the OSes for no good reason other than to vex the respondent. Accordingly, the *Henderson* doctrine applied to bar the appellants from raising these issues at that late stage.

15 The rejection of the Amendment Applications meant that the only remaining substantive claim for final injunctive relief had already been met by the respondent's disengagement as solicitors. The Judge therefore affirmed the AR's decision to allow the Striking Out Applications.

The present appeals

16 On 27 September 2023, the appellants filed: (a) notices of appeal against the Judge's decision in relation to the Striking Out Applications; and (b) applications for permission to appeal (the "PTA Applications") against the Judge's decision in relation to the Amendment Applications.

17 The PTA Applications were allowed on 16 November 2023 by the Appellate Division of the High Court (the "Appellate Division"). The Appellate Division found that the intended appeals raised the novel issue of whether the *Henderson* doctrine may apply in a case where there has been no determination on the merits at any stage of the proceedings.

18 On 26 January 2024, the appellants filed an application for permission to transfer the appeals from the Appellate Division to the Court of Appeal (the

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"Transfer Application"). The Transfer Application was allowed on the basis that it was more appropriate for this court to hear the appeals given that the question of law identified by the Appellate Division was a complex and novel issue of public importance.

Parties' submissions

19 On appeal, the appellants submitted that the Proposed Amendments were necessary to allow the real question in controversy between the parties to be resolved. The real question was whether the respondent had breached its duties and obligations owed to the appellants in respect of the relevant confidential information. The appellants argued that the Judge erred in finding that the circumstances and manner in which the Amendment Applications were filed indicated that they were disingenuous. Further, the *Henderson* doctrine could not be applied to the present case since there was no determination on the merits at any stage of the proceedings.

20 The respondent argued that the Judge was correct to find that the appellants had made the Amendment Applications for collateral purposes. The respondent also submitted that the Amendment Applications fell foul of the *Henderson* doctrine, which should not be limited only to cases in which there was a prior opportunity for determination of the merits of the relevant issue. Further, the respondent contended that it would be prejudiced if the Amendment Applications were allowed as it had acted to its detriment irreversibly by ceasing to act for OTPL, HLT and the liquidators as stated in the 12 September Letter.

Issues

21 The following issues arose for our determination:

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(a) whether the *Henderson* doctrine could apply to the Amendment Applications where there has not yet been a prior determination of the merits of the case;

(b) whether the Amendment Applications otherwise amounted to an abuse of process generally; and

(c) depending on the answers to the first two issues, the consequential directions to be issued by the court.

Issue 1 – whether the *Henderson* doctrine could apply to the Amendment Applications

22 The genesis of the rule in *Henderson* is Sir James Wigram VC's statement in *Henderson* (at 115):

> … where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time. …

23 It will be clear from Wigram VC's statement that the rule in *Henderson* was originally envisioned as an extension of *res judicata* principles. The rule in *Henderson* is also known as the extended doctrine of *res judicata*, given that it extended traditional *res judicata* principles (*ie*, cause of action estoppel and issue estoppel) beyond cases where the relevant point was actually decided by a court in earlier proceedings between the same parties: *The Royal Bank of*

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Scotland NV (formerly known as ABN Amro Bank NV) and others v TT International Ltd (nTan Corporate Advisory Pte Ltd and others, other parties) and another appeal [2015] 5 SLR 1104 ("*TT International*") at [102].

24 The significance of the *Henderson* doctrine's roots in *res judicata* is that it seeks to protect the same underlying interest as the other forms of *res judicata*, *ie*, that there should be finality in litigation and that a party should not be vexed twice in the same matter (see Lord Bingham's speech in *Johnson v Gore Wood & Co (a firm)* [2001] 2 WLR 72 ("*Johnson*") at 90). The protection of this underlying interest is necessarily linked to the existence of a prior judicial determination which provides the finality that is sought to be protected.

25 The parties in this appeal did not dispute the Judge's finding that the *Henderson* doctrine may apply to different stages of the same action. We agree with this finding. Finality is well-respected in the cases applying the *Henderson* doctrine in the usual manner, which is to bar issues which could and should have been raised in a prior action from being raised in subsequent proceedings. It remains well-respected even where the doctrine is sought to be applied to different stages of the same action. In these cases, the doctrine is generally applied to bar parties from raising issues at later stages of the same proceedings which could and should have been raised at the merits stage (where a judicial determination was already made): see *Tannu v Moosajee and another* [2003] EWCA Civ 815 at [24], [34] and [40]; *Seele Austria GmbH Co v Tokio Marine Europe Insurance Limited* [2009] EWHC 255 (TCC) at [109]; *Gruber and another v AIG Management France, SA and another* [2019] EWHC 1676 (Comm) ("*Gruber*") at [70]; and *Kensell v Khoury and another* [2020] EWHC 567 (Ch) ("*Kensell*") at [51].

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26 The source of confusion in the present case is that the rule in *Henderson* is also recognised as falling under the doctrine of abuse of process: *Goh Nellie v Goh Lian Teck and others* [2007] 1 SLR(R) 453 ("*Goh Nellie*") at [19] and *Johnson* at 90. In fact, it is often regarded as the root of the doctrine of abuse of process: *Goh Nellie* at [52]. Further categories of abuse of process have spawned in the wake of *Henderson*, with the court in *Hunter v Chief Constable of the West Midlands Police and others* [1982] AC 529 extending the doctrine to include collateral attacks on previous decisions. There are presently several other recognised categories of abuse of process, such as: (a) proceedings which involve a deception on the court or are fictitious or constitute a mere sham; (b) proceedings where the process of court is being employed for some ulterior or improper purpose or in an improper way; (c) proceedings which are manifestly groundless or which serve no useful purpose; and (d) multiple or successive proceedings which cause or are likely to cause improper vexation or oppression: *Chee Siok Chin and others v Minister for Home Affairs and another* [2006] 1 SLR(R) 582 at [34]. At present, *Henderson* abuse is but one category of the doctrine of abuse of process.

27 The rule in *Henderson* is largely concerned with preventing unfairness stemming from a party's failure to raise a point at a prior judicial determination where it could and should have been raised. Lord Bingham in *Johnson* (at 90) explained that:

> … The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to [*Henderson*] abuse if the court is satisfied … that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty …

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In contrast, other categories of abuse of process, such as proceedings which involve a deception of the court, proceedings with an ulterior or improper purpose or proceedings which are manifestly groundless do not depend on the existence of a prior judicial determination. The inquiry into whether the issue sought to be raised in later proceedings related to "matters that properly belong to the subject of the determined litigation" (see *Gruber* at [11(b)] and *Goh Nellie* at [55]) necessarily assumes the existence of a prior determination.

28 The court's assessment of the "finality" of the prior determination also affects the strictness with which the *Henderson* doctrine applies: *Gruber* at [11(h)] and *Kensell* at [51]–[53] and [60]. The more "final" the nature of the prior determination, the more likely it is that a party will be barred under the doctrine from raising in later proceedings issues which could and should have been raised at that determination: *Gruber* at [11(h)]. For instance, where the relevant determination was a final decision on the merits following a trial of all issues. Conversely, for prior determinations of a more interlocutory nature, such as decisions on preliminary issues, summary judgments or decisions on interlocutory applications, the doctrine is less likely to apply since greater leeway may be given to parties who may not have set out their cases comprehensively at such determinations. Either way, the operation of the doctrine hinges on the existence of a prior determination in the same or earlier proceedings.

29 It follows from the above discussions that the *Henderson* doctrine applies only to cases where there has been a prior determination at which the relevant issue could and should have been raised. The underlying interest protected by the *Henderson* doctrine – finality of litigation and protecting litigants from being vexed twice in respect of the same issues – was not engaged in the present case as there was no prior judicial determination of the substantive

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issues arising from the allegations of breach of confidence and breach of duty. The only determination made up to this stage was on the preliminary issue of the proper applicants in the OSes: see [6]–[8] above. The necessary inquiry whether the issue in question was properly the subject of a prior determination therefore could not take place in the absence of such a determination. In the circumstances, the *Henderson* doctrine was inapplicable to the case here.

30 Where there is no prior determination, delay alone should not ordinarily bar the subsequent raising of new issues unless there is irremediable prejudice to the other party. The primary abusive element identified by the Judge in the present case was the lack of *bona fides* on the appellants' part in bringing the Amendment Applications. That should have been the proper focus of the inquiry into abuse of the process of court. The consideration of the rule in *Henderson* was unnecessary and inappropriate in the circumstances of this case.

31 The concepts of *res judicata* and abuse of process are distinct but overlapping areas of law which share the common aim of preventing unfair litigation from proceeding: *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd* [2013] UKSC 46 ("*Virgin Atlantic*") at [25]. However, *res judicata* is concerned primarily with protecting the finality of prior determinations. The rules of *res judicata* (such as issue estoppel and cause of action estoppel) are more clearly defined. For this reason, the principles of *res judicata* are often considered to be rules of substantive law rather than the more flexible application of the court's procedural powers: *Virgin Atlantic* at [25].

32 On the other hand, abuse of process addresses a wider range of unfair litigation. It focuses on the propriety of an action, often examining the facts and circumstances of a case to ascertain the subjective state of mind of the parties. Abuse of process is therefore regarded as an application of the court's

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procedural powers, involving the court's evaluative judgment and carrying a higher degree of flexibility: *TT International* at [104].

33 The rule in *Henderson* lies at the confluence of *res judicata* and abuse of process. It is concerned with protecting the finality of a prior determination and therefore can be applied even where the parties do not have any improper or dishonest motives. At the same time, due to a recognition of the expanded scope of issues which may be captured by the rule, courts applying the *Henderson* principle would look to the entirety of the circumstances of the case and have been cautious to ensure that there is an element of impropriety, dishonesty or unjust harassment which justifies precluding a party from raising the relevant issue in later proceedings: *Johnson* at 31.

Issue 2 – whether the Amendment Applications amounted to an abuse of process generally

34 Having found that the *Henderson* doctrine was inapplicable in the present case, we next considered whether the Amendment Applications were nevertheless an abuse of process generally. The respondent argued that the present case was on all fours with *TMT Asia Ltd v BHP Billiton Marketing AG (Singapore Branch) and another* [2019] 2 SLR 710 ("*TMT Asia*"), in which this court held that it was an abuse of process for the appellant to continue prosecuting a claim in the face of a settlement offer that would have given all the reliefs sought: *TMT Asia* at [31] and [38(b)].

35 The 12 September Letter did give the appellants effectively what they sought in the original OSes by the respondent's disengagement from OTPL, HLT and the liquidators. However, the appellants argued that the respondent's disengagement fell short of satisfying all the live issues in the original OSes, since the disengagement was stated expressly to be without admission of the

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allegations of breach of confidence made in the appellants' affidavits. The appellants submitted that if the original OSes had proceeded, the court would necessarily have had to make findings on those allegations.

36 We were not persuaded by the appellants' arguments on this point. Under the test in *LVM Law Chambers LLC v Wan Hoe Keet and another and another matter* [2020] 1 SLR 1083 at [20], an injunction against a lawyer would rightly be granted upon the demonstration of any risk of misuse of confidential information obtained from the former client. It was by no means certain that a decision on the original OSes would have entailed substantive findings being made on the allegations of breach of confidence. Seeking vindicatory relief in the form of a formal finding of liability, in the face of an open offer to agree to all reliefs sought without any admission of liability, may be justified in only very special circumstances: *TMT Asia* at [37].

37 However, this issue would be moot if the appellants' Amendment Applications succeed. If these applications succeed, then the 12 September Letter would clearly not give the appellants all the reliefs sought in the OSes. It would take the present case out of the situation before the court in *TMT Asia*. In the circumstances, the important question before the court was whether the Amendment Applications should be allowed.

38 The Proposed Amendments (see [11] above) relate to the real issue in controversy between the parties because the core of the dispute was the protection of any legitimate interest that the appellants had in their confidential information. All the Proposed Amendments were incidental to the protection of this interest.

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39 However, the Judge's decision was based on his inference that the appellants did not intend the Proposed Amendments to address the real issue in controversy and that they filed the Amendment Applications for collateral purposes. Some factors supported the Judge's decision. There was undue delay in the filing of the Amendment Applications. Even considering the complex procedural history of the OSes, including the Previous Striking Out Applications, the Joinder Applications and certain discovery requests and applications made by the appellants, the delay of more than two years in the filing of the Amendment Applications (from the filing of the OSes in July 2020 to September 2022) gave cause for the Judge's doubt as to the *bona fides* of the appellants. Further, as the Judge noted, the filing of the Amendment Applications immediately after the Striking Out Applications were served gave further reason for suspecting that the former were merely part of a tactical ploy to keep the OSes alive for the sake of vexing the respondent.

40 The threshold for finding an abuse of process is high: *Beyonics Asia Pacific Ltd and others v Goh Chan Peng and another and another appeal* [2022] 1 SLR 1 at [69]. Such a finding is grave and should not be made lightly. In our view, it could not be said that the circumstances indicated clearly that the appellants filed the Amendment Applications for collateral purposes. Central to this view was the fact that the Amendment Applications relate to the real issue of confidentiality which was in dispute between the parties. It was incumbent on the respondent, therefore, to show clearly why the appellants lacked *bona fides* in pursuing reliefs which flowed naturally from the factual matrix of the present case. The undue delay and timing in the filing of the Amendment Applications did not indicate clearly that the appellants had no genuine wish to pursue the reliefs in the Proposed Amendments. An equally reasonable conclusion to draw from the circumstances was simply that the appellants' pleadings and litigation strategy in the present case were not thought through

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carefully. The same could explain the fact that the appellants continued to pursue the Proposed Amendments through the ill-suited OS process.

41 The court should be extremely hesitant to punish litigants for mistakes they make in the conduct of their cases, by deciding otherwise than in accordance with their rights: *Ng Chee Weng v Lim Jit Ming Bryan and another* [2012] 1 SLR 457 at [24]. An amendment which would enable the real issues between the parties to be tried should be allowed subject to costs, unless the amendment would cause prejudice to the opposing party which cannot be compensated in costs: *Wright Norman and another v Oversea-Chinese Banking Corp Ltd* [1993] 3 SLR(R) 640 at [6]. Generally, the later the stage of the proceedings in which the amendment is sought, the stronger would be the grounds required to justify the amendment sought: *Asia Business Forum Pte Ltd v Long Ai Sin and another* [2004] 2 SLR(R) 173 at [12].

42 In our view, the delay in filing the Amendment Applications should not bar the appellants from amending their claims. Despite the length of time following the filing of the original OSes, the proceedings remained at a fairly nascent stage. There was no hearing on the substantive merits. In fact, the case was not ready for hearing on the merits. Progress was hindered due largely to the Previous Striking Out Applications and the Joinder Applications. The late filing of the Amendment Applications therefore should not cause irremediable prejudice to the respondent.

43 The respondent argued that by relying on the appellants' consistent representation that their sole concern was the respondent's continued representation of OTPL, HLT and the liquidators, the respondent had taken the irreversible step of ceasing such representation. Accordingly, there would be irremediable prejudice if the Amendment Applications were allowed.

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44 However, the respondent is free to withdraw its undertaking not to act for OTPL, HLT and the liquidators if the undertaking is not accepted. The respondent's voluntary disengagement was therefore not irreversible although re-engagement as solicitors for the said parties might not be considered to be a prudent course of action to take in the situation here. It was also difficult to say that the appellants' original claim for only injunctive relief amounted to a representation to the respondent that they would not add further claims in the future. The introduction of further claims in an action by way of amendment is not an uncommon occurrence. Counsel for the appellants confirmed at the hearing before us that they would not have agreed to discontinue the OSes on account of the respondent's disengagement as there were further reliefs which they intended to pursue.

45 Accordingly, we held that there was no irremediable prejudice caused to the respondent by the late filing of the Amendment Applications. To the extent that inconvenience and further expenses are occasioned by the delay and the commencement of these proceedings using the incorrect originating process, the respondent could be compensated by an award of costs at the appropriate juncture.

46 For the reasons discussed above, we allowed the Amendment Applications. The *Henderson* doctrine was inapplicable here. There was also no general abuse of process in the filing of the Amendment Applications. It was difficult to conclude that the Amendment Applications were intended primarily to harass the respondent rather than to seek the reliefs stated therein. Since the Striking Out Applications were premised on the rejection of the Proposed Amendments, we dismissed the Striking Out Applications.

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Issue 3 – the consequential directions

47 Consequent to our decision above, we made the following directions:

(a) The appellants were directed to file pleadings within four weeks of the date of the hearing setting out their claims in accordance with the claims indicated in their applications to amend.

(b) The affidavits which had been filed so far were to stand.

(c) This matter would proceed as an Originating Claim under the Rules of Court 2021 ("ROC 2021") with effect from the date of the hearing before us.

(d) Any further directions in relation to the conduct of this matter would be sought from the assigned registrar or the trial judge.

48 It was suggested to us that in the event the existing OS process was found to be unsuitable for the claims in the Proposed Amendments, the current action could be struck out without prejudice to the appellants filing a fresh action in respect of these claims. In our view, the more expeditious option was to convert the OSes here to the new Originating Claim procedure under the ROC 2021, with pleadings to be filed in the usual course of proceedings. We did not see the need to comment on whether the reliefs sought in the Proposed Amendments should be allowed in full or in part because this is a matter for the relevant court to decide in due course. Once the Proposed Amendments were set out in the pleadings, if the respondent wished to strike out those pleadings in full or in part, it could make the application before the assigned registrar or the trial judge.

Conclusion

49 For the reasons set out above, we allowed the appeals.

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50 We then directed the parties to present to the court an agreed proposal on the appropriate costs orders within two weeks. In the event that they were unable to come to an agreement on costs, they were to file written submissions on the appropriate orders for the three categories of costs stated by the court. These categories are set out in our decision on costs below.

51 The parties could not agree on the appropriate costs orders. They therefore filed their respective written submissions on costs.

Costs orders

52 We considered the parties' written submissions on costs and made the following orders. As stated above, there were three categories of costs orders to be made.

53 First, the costs of the OSes, except for the costs in relation to: (a) the Amendment Applications; (b) the Striking Out Applications; (c) HC/RA 90/2023, HC/RA 91/2023, HC/RA 92/2023 and HC/RA 93/2023 (which were the appeals against the AR's decision at [12] above) (collectively, the "Registrar's Appeals") and (d) other related applications. This shall be referred to as the "First Category of Costs".

54 Second, the costs thrown away by the amendments made by the appellants to their claims in the OSes as well as any costs consequential upon the amendments made. This shall be referred to as the "Second Category of Costs".

55 Third, the costs of: (a) these appeals; (b) the Amendment Applications; (c) the Striking Out Applications; (d) the Registrar's Appeals; (e) the PTA

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Applications; and (f) the Transfer Application. This shall be referred to as the "Third Category of Costs".

56 In relation to the First Category of Costs, in line with the parties' agreement, we made the following orders:

(a) The costs of the OSes from 5 October 2021 to 31 July 2021 are to be reserved to the trial judge. For avoidance of doubt, these exclude the costs of the Amendment Applications, the Striking Out Applications, the Registrar's Appeals and the related applications.

(b) There is to be no costs order in respect of costs of the OSes for the period beginning from when the OSes were first commenced up to 4 October 2021 (*ie*, the period before the Previous Striking Out Applications were filed).

57 In relation to the Second Category of Costs, we made the following orders:

(a) The costs thrown away by the amendments are to be paid by the appellants to the respondent with the quantum to be assessed by the trial judge.

(b) The appellants are to pay the costs consequential upon the amendments in the sum of $10,000 (all-in) to the respondent.

58 In relation to the Third Category of Costs, we made the following orders:

(a) The respondent is to pay costs to the appellants in the sum of $30,000 (all-in) in respect of the costs for these appeals.

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(b) The costs orders made in respect of the Amendment Applications are reversed, such that the respondent is to pay costs to the appellants in the sum of $4,600 (all-in) for each of the Amendment Applications.

(c) The costs orders made in respect of the Striking Out Applications are reversed, such that the respondent is to pay costs to the appellants in the sum of $3,000 (all-in) for each of the Striking Out Applications.

(d) The costs orders made in respect of the Registrar's Appeals are reversed, such that the respondent is to pay costs to the appellants in the sum of $15,000 (all-in) for the Registrar's Appeals collectively.

(e) The respondent is to pay costs to the appellants in the sum of $16,000 (all-in) in respect of the costs for the PTA Applications.

(f) The respondent is to pay costs in the sum of $8,000 (all-in) to the appellants in respect of the costs for the Transfer Application.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Judith Prakash
Senior Judge

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Christopher Anand s/o Daniel, Harjean Kaur, Yeo Yi Ling Eileen and Lim Yi Zheng (Advocatus Law LLP) for the appellants in CA/CA 12/2024 and CA/CA 14/2024;
Suresh s/o Damodara, Ong Ziying Clement, Ning Jie, Preshin Manmindar and Sun Lupeng Cedric (Damodara Ong LLC) for the appellants in CA/CA 13/2024 and CA/CA 15/2024;
Lok Vi Ming SC, Pak Waltan, Zhuang Wenxiong, Wong Xiao Wei and Clara Lim Ai Ying (LVM Law Chambers LLC) for the respondent.

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