IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC 176

Suit No 268 of 2022 (Summons No 1060 of 2024)

Between

(1) Hyflux Ltd (in compulsory liquidation)
(2) Hydrochem (S) Pte Ltd (in compulsory liquidation)
(16) Tuaspring Pte Ltd (under receivership)

… *Plaintiffs*

And

KPMG LLP

… *Defendant*

JUDGMENT

[Civil Procedure — Striking out]

TABLE OF CONTENTS

Hyflux Ltd (in compulsory liquidation) and others
v
KPMG LLP

[2024] SGHC 176

General Division of the High Court — Suit No 268 of 2022 (Summons No 1060 of 2024)
Aedit Abdullah J
26 June 2024

10 July 2024 Judgment reserved.

Aedit Abdullah J:

1 This brief judgment captures my decision and reasoning on this application, which is published primarily because of the defendant's references to remarks made by Justice Choo Han Teck on the pleadings in his decision, reported in *Hyflux Ltd (in compulsory liquidation) and others v KPMG LLP* [2023] SGHC 270 ("*Hyflux*"), which concerned an appeal of an application for further and better particulars.

2 The plaintiffs are pursuing claims against the defendant, in tort and contract, for breach of obligations relating to the previous preparation of accounts and financial statements of the plaintiffs.

Summary of arguments

3 The defendant applied to strike out, under O 18 r 19(1)(*a*) of the Rules of Court (2014 Rev Ed), parts of the Statement of Claim as failing to disclose a reasonable cause of action.[1] The defendant argues that the Statement of Claim failed to set out the material facts relating to the alleged breach of contract, not even identifying the contract nor the terms. The pleadings are vague, leaving the defendant to guess what the heads of claim are. The plaintiffs, the defendant says, have refused to amend their pleadings despite being given the opportunity to do so after the judgment was issued by Choo J and on the defendant's requests. The defendant relied on criticisms made by Choo J in hearing the particularisation application appeal, characterising those remarks as showing up the inadequacies of the Statement of Claim and that the plaintiffs had failed to sufficiently plead a breach of contract.

4 The plaintiffs argue that the high threshold for striking out has not been met. According to the plaintiffs, they have, as required, pleaded the contracts, terms, breach of the terms and that damages have been suffered. The Statement of Claim has sufficiently particularised the contractual relationship created by way of the engagement letters between the parties, the express terms in those letters and the implication of a term for business efficacy or under operation of law that there was a contractual duty to exercise reasonable skill and care in the defendant's audit work. Breach was also sufficiently particularised. Furthermore, the defendant, having filed a substantial defence, knows the case to be met.

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1 Defendant's Written Submissions (dated 19 June 2024) ("DWS") at para 2.

Decision

5 As succinctly and pithily summarised by Professor Pinsler in Jeffrey Pinsler SC, *Singapore Court Practice 2017* vol 1 (LexisNexis, 2017) ("*Singapore Court Practice 2017*") at para 18/7/1, the pleadings must summarise briefly the material facts relied upon for the claim:

> Every pleading 'must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits' (r 7(1)). In *Multi-Pak Singapore (in receivership) v Intraco* [1992] 2 SLR(R) 382, Selvam JC said of r 7 (and r 15(1)):
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> > The object of these rules is two-fold – (a) to ensure that the plaintiffs have a legally sustainable claim and thereby eliminate frivolous and baseless actions; and (b) to inform the opponent in advance of the case he has to meet when the case comes on for trial so that justice can be done to both sides expeditiously and smoothly. It is a requirement of essential justice that an opponent is given adequate opportunity to prepare and present his view of the cause.
>
> The rule consists of a number of requirements … :
>
> (a) the pleading must contain material facts and not just any fact (see para 18/7/2);
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> (b) the material facts which support the claim or defence must be pleaded (see para 18/7/3);
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> (c) legal argument is not to be included (because it is extraneous to material facts) (see para 18/7/4);
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> (d) points of law may be raised (see r 11);
>
> (e) evidence must not be pleaded (material facts must be distinguished from the evidence) (see para 18/7/5);
>
> (f) the statement of material facts must be as brief as the nature of the case admits (see para 18/7/6).

Striking out

6 The application before me is for the striking out under O 18 r 19(1)(*a*) of offending parts of the Statement of Claim as not disclosing any reasonable cause of action.[2]

7 Order 18 r 19(1)(*a*) reads:

> (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement of any writ in the action, or anything in any pleading or in the endorsement, on the ground that —
>
> (*a*) it discloses no reasonable cause of action or defence, as the case may be;
>
> ...
>
> and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

8 The law was not in dispute. Pleadings are to be struck out only in plain and obvious cases: *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 at [18]. A failure to plead the contract, the contractual terms alleged to have been breached, the nature of the breach and damages would be an inadequate claim in contract, and would not disclose a reasonable cause of action: see *Kalzip Asia Pte Ltd v BFG International Ltd* [2018] SGHC 152 at [106]; *Singapore Court Practice 2017* at para 18/7/3.

9 The crux of the parties' dispute was whether the plaintiffs had adequately pleaded these in its Statement of Claim.

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[2] DWS at para 3; HC/SUM 1060/2024 (Summons under O 18 r 19).

10 The plaintiffs cited a decision by Lee Seiu Kin JC in *Keppel Tatlee Bank Limited v Bandung Shipping Pte Ltd* [2002] SGHC 47 ("*Keppel*"), to support the adequacy of their pleadings.[3] They contend that it is not necessary to go to the extent of laying matters out extensively. In *Keppel*, all that was pleaded were the bills of lading, failure to deliver cargo against the presentation of the bills, and that damages were suffered. What that case illustrates is that the adequacy of what is pleaded has to be measured by the specific claim made in a particular case. I would hesitate to conclude, nor would I think that that was the judge's intention in *Keppel*, that the assessment of the pleadings there necessarily helps in any other case. The plaintiffs' pleadings must stand or fall within the four corners of their claim here.

11 On the analysis of the pleadings within the context of the claim here, I am satisfied that there is a reasonable cause of action, and that the defendant's striking out application must fail.

The contract

12 Here the plaintiffs point to the following parts of the Statement of Claim. Paragraphs 12, 13 and 14 refer to the retaining of the defendant under various letters of engagement:[4]

(a) In 2010, in respect of Hyflux Ltd (in compulsory liquidation) ("Hyflux") and Hydrochem (S) Pte Ltd (in compulsory liquidation) ("Hydrochem"), for the period from 2010 to 2016;[5]

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3 Plaintiffs' Written Submissions (dated 19 June 2024) ("PWS") at para 14.

4 PWS at para 5.

5 PWS at para 5(a).

(b) In 2011, in respect of Tuaspring Pte Ltd (under receivership) ("Tuaspring"), for the period 2011 to 2016;[6] and

(c) In 2017, in respect of Hyflux, Hydrochem, Tuaspring, and other entities, for 2017 onwards until terminated.[7]

These, the plaintiffs say, constituted the contractual relationship between the parties.[8] However, the engagement letters have not been expressly defined as the contract(s), which the plaintiffs rely on for their breach of contract claim, in the Statement of Claim.

13 The defendants say that it is unclear what the contract between the parties is, and that the door has been left open for the plaintiffs to vacillate and assert some other contact as the basis of the relationship.[9]

14 Examining the Statement of Claim as a whole, I could not see any other contract referenced, and the submission of the plaintiffs rely only on the engagement letters pleaded above. The plaintiffs had clearly pleaded the contract.

The terms

15 The plaintiffs contend that they have pleaded at paragraph 16 of the Statement of Claim that it was an express term of the engagement letters that the defendant would carry out the audits in accordance with the Singapore Standards on Auditing ("SSAs"), and the relevant clauses have been

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6 PWS at para 5(b).

7 PWS at para 5(c).

8 PWS at para 5.

9 DWS at paras 26–27.

particularised in the further and better particulars dated 6 December 2022.[10] Paragraph 16 reads:

> It was an express term of the Engagement Letters that KPMG would carry out the relevant audits in accordance with the Singapore Standards on Auditing (each an "SSA" and collectively the "SSAs") issued by the Institute of Singapore Chartered Accountants ("ISCA"). The Plaintiffs will refer to the SSAs as necessary for their full terms and effect.

16 The plaintiffs further say that it has been pleaded as well that an implied term arose by either business efficacy or operation of law that reasonable skill and care would be employed in the audit.[11] The plaintiffs aver that this is contained in paragraph 17 of the SOC, which reads:

> It was an implied term of the Engagement Letters that KPMG would exercise reasonable skill and care in carrying out their audit work. This term is implied by reason of business efficacy or by operation of law. Further, KPMG owed the Plaintiffs a tortious duty to exercise reasonable skill and care in carrying out its audit work. In discharging its duty to exercise reasonable skill and care, KPMG was required to meet the standards of a reasonably competent auditor as assessed by reference to the SSAs, among other things. By accepting its appointment as auditors, KPMG held itself out as having the necessary skills, qualifications, audit tools and technical expertise to audit the Group and the companies within the Group for which they were the auditor.

17 The detailed obligations, the plaintiffs say, are captured in paragraph 18 of the Statement of Claim.[12] This covers various matters including reporting whether the accounts gave a true and fair view of Hyflux's financial position; whether they were free from material misstatement; and examination of the

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10 PWS at para 6(a); Further and Better Particulars of the Statement of Claim served pursuant to the Defendant's request dated 14 November 2022 (dated 6 December 2022).

11 PWS at para 6(b).

12 PWS at para 6(c).

evidence supporting the various representations and reports covered by the audit.[13]

18 The defendant instead submits that the plaintiffs have not identified the material terms of the contracts, if any, that have allegedly been breached.[14]

19 I accept that the material facts of the terms of the contracts have been pleaded. The plaintiffs are not required to plead by quoting the specific clauses. Their assertion is that compliance with the SSAs is an obligation under the contract. It is thus a term.

Breach

20 The plaintiffs say that breach was established through claims regarding:

(a) the defendant's failure to identify material misstatements;[15]

(b) the defendant's failure to identify that Hyflux's financial statements should not have been prepared on a going concern basis;[16]

(c) non-compliance with the SSAs.[17]

21 The paragraphs relied upon by the plaintiffs state that Hyflux's financial statements were stated to have been prepared in accordance with the Singapore

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13 Statement of Claim (Amendment No. 1) for HC/S 268/2022 (dated 26 September 2023) ("SOC") at para 18.

14 DWS at para 26.

15 PWS at paras 7(a) and 8(a); SOC at paras 19–22 and 48.

16 PWS at paras 7(b) and 8(b); SOC at paras 49–50.

17 PWS at para 8.

Financial Reporting Standards ("FRS"), showing good performance,[18] but were actually misstated because of failure to recognise or cater for losses or impairment relating to Tuaspring.[19]

22 A substantial part of the Statement of Claim elaborated at length on some of these failures.

23 The Statement of Claim asserted at length that the financial statements should not have been prepared on a going concern basis or should have at least disclosed material uncertainties affecting the ability to continue as a going concern, in compliance with the FRS, or otherwise to provide fair information or to ensure other compliance with the FRS.[20] Negligence, on the basis of a failure to detect the aforementioned misstatements, going concern and disclosure issues, was also alleged.[21] This was at least partly a breach of the SSAs.

24 Paragraph 50 of the Statement of Claim was the only point at which breach of contract was expressly mentioned:

> As a result of KPMG's deficient audits, *it failed in breach of contract* and duty to identify that Hyflux's Financial Statements for 2014 to 2017 should not have been prepared on a going concern basis, or at least that there were material uncertainties about Hyflux's or the Group's ability to continue as a going concern, which required disclosure in Hyflux's Financial Statements. KPMG should have realised the matters set out in Section C.7 above.
>
> [emphasis added]

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18 SOC at paras 19–20.

19 SOC at paras 21–22 and 26.

20 SOC at paras 43–45.

21 SOC at para 47.

25 I find that breach has thus been adequately pleaded. Where the claim may have fallen a little short is in making explicit the relationship between the financial reporting standards which were covered from paragraph 19 onwards, on the one hand, and the SSAs, compliance with which was incorporated as a term of the contract between the parties. However, this failure was not one that would, to my mind, lead to the absence of a reasonable cause of action. The connection between the two is at least implicit, and the absence of an expressly stated connection does not plainly and obviously show a lack of a reasonable cause of action.

Damages

26 The plaintiffs say that losses were suffered through payment of dividends, financing and interest paid for perpetuals, and other instruments, and other payments.[22]

27 I find that the Statement of Claim does note the losses suffered, at paragraph 65.

The defence being pleaded at length

28 The plaintiffs submit that the defendant exhibited no difficulty in filing a substantive defence and thus knows the case against it.[23] The lengthy defence filed would not cure any deficiency in the plaintiffs' claim. The concern of the court in a striking out application based on an absence of a reasonable cause of action is not with whether the defendant is taken by surprise, or is unsure of the

22 PWS at para 10.

23 PWS at paras 21–22.

case against it. The focus is purely on the plaintiff's own claim and whether anything actionable is in fact disclosed.

Whether the contracts pleaded were vague

29 The defence also raised concerns about the plaintiffs invoking other contracts at trial.[24] To this, it suffices to say that the court's construction and the plaintiffs' position on pleadings have been outlined above. The colours have been nailed to the mast; the plaintiffs cannot alter their position without amending their pleadings. The contracts are those in the letters of engagement, and the relevant terms are those incorporating the SSAs.

Justice Choo's remarks

30 Reliance was placed by the defendant on Choo J's remarks criticising the plaintiffs' pleadings. I note Choo J was primarily concerned with the need for concision and succinctness in pleadings (see *Hyflux* at [3]); both sides have been prolix and, with respect, fairly unrestrained in their pleadings, though it could be said with some justification that the plaintiffs were the ones who started the ball rolling. Choo J's remarks are a useful reminder of the objective and ideal of proper pleading. But I do not read Choo J's remarks as lending any assistance to the defendant's striking out application: he was concerned with an appeal on particulars.

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[24] DWS at para 27.

Conclusion

31 The defendant's application has thus failed for the above reasons.

Aedit Abdullah
Judge of the High Court

Kenneth Tan SC (Kenneth Tan Partnership) (instructed), Ng Ka Luon Eddee, Leong Qianyu, Teo Jin Yun Germaine, Gitta Priska Adelya, Lu Yanrong Elycia and Clarise Chew Shu-Min (Tan Kok Quan Partnership) for the respondents/plaintiffs;
Thio Shen Yi SC, Tan May Lian Felicia, Joshua Phang Shih Ern, Juliana Lake (Lu Zhixuan) and Tay Zhuo Yan Isaac (TSMP Law Corporation) for the applicant/defendant;
Sheiffa Safi Shirbeeni and Sambhavi Rajangam (Davinder Singh Chambers LLC) for the non-party (watching brief).