

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

[2023] SGHC 27

Suit No 268 of 2021
(Registrar's Appeal No 312 of 2022)

Between

Jiangsu New Huaming International Trading Co Ltd
... Plaintiff

And

1. PT Musim Mas
2. Inter-Continental Oils & Fats Pte. Ltd
... Defendants

JUDGMENT

[Civil Procedure — Amendment of pleadings]

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Jiangsu New Huaming International Trading Co Ltd

v

PT Musim Mas and another

[2023] SGHC 27

General Division of the High Court — Suit No 268 of 2021 (Registrar's Appeal No 312 of 2022)

Choo Han Teck J

30 January 2023

6 February 2023

Judgment reserved.

Choo Han Teck J:

1 The plaintiff is a company in China which sold palm oil as an agent of the first defendant, a major palm oil producer in Indonesia. The second defendant was an agent for the first defendant in Singapore. Over time, the plaintiff also sold palm oil as an agent for the second defendant. This suit was commenced by the plaintiff against both defendants for breach of contract. It is claiming general damages.

2 This suit was filed on 17 March 2021. The second defendant represented by Ms Joanna Chew, requested further and better particulars by a letter dated 21 April 2021. The plaintiff, represented by Mr Lim Tean, did not answer the request and the second defendants applied under HC/SUM 2012/2021 which was heard by an Assistant Registrar and the plaintiff was ordered to answer the requests by 20 September 2021. The plaintiff filed an appeal against that order

on 20 September instead. That appeal was dismissed on 11 October 2021, and the plaintiff was ordered to answer the request by 25 October 2021. The plaintiff did not do so, and at a Pre-Trial Conference on 29 October 2021, counsel told the court that the request would be answered by 3 November 2021, but come that date, no answers were provided. The second defendant then applied under SUM 5155/2021 (“SUM 5155”) on 11 November 2021 for an “unless order” to compel the plaintiff to answer the request for further and better particulars. Only then, the plaintiff filed its answers on 14 November 2021, but the second defendant’s lawyers were not satisfied with them because they thought the answers were “vague and incomplete”.

3 SUM 5155 was heard on 18 March 2022 and the plaintiff was ordered to comply with the order for further and better particulars by 11 April 2022, failing which, the plaintiff’s claim against the second defendant would be struck out without further order. The plaintiff filed its answers on 11 April 2022, and again the second defendant’s lawyers took the view that the answers were “incomplete and vague”. Pursuant to the second defendant’s request, the Registrar heard the parties on 26 May 2022, and gave her decision on 3 June 2022, and she ordered that the plaintiff’s claim for unpaid commissions to be struck out. Various tidying up of the pleadings then took place. These were consequential acts, such as removing the annexes in the Statement of Claim that contained the plaintiff’s answers to the request for further and better particulars.

4 The plaintiff then applied by SUM 3357/2022 (“SUM 3357”) to amend its statement of claim by including a claim for unpaid commissions. SUM 3357 was dismissed by an assistant registrar. The plaintiff thus appealed in HC/RA 312/2022, the present appeal before me. It is clear, and it was also not disputed at the hearing before me, that the application in SUM 3357 for

amendment of pleadings was to reinsert the claim for the unclaimed commissions that had been struck out on 3 June 2022.

5 Mr Lim submits that the plaintiff is not precluded from amending its statement of claim to include a claim, even though it had been struck out previously pursuant to an “unless order”. He says that the assistant registrar was wrong to hold that if the plaintiff were allowed to amend the claim, it would “have a second bite of the cherry”. Mr Lim then argues that the learned assistant registrar misunderstood what having “a second bite of the cherry” means. He says that “having a second bite of the cherry” means “the plaintiff amending to have another go when the case has already been decided against him, or when during trial, his initial position has been demolished and he is attempting to salvage his case by amending his pleadings”.

6 Law and its practice should be kept simple and clear. Idioms and euphemism may sound attractive but are usually cliché. In the context of submissions to the court, and in the judgments of the court, they can create uncertainty. The phrase “having a second bite of the cherry” is usually understood to mean having a second opportunity to do something one missed the first-time round. So even if all parties had understood the meaning of this phrase, it does not resolve the legal issue in this case.

7 The claim for unpaid commissions that the plaintiff wishes to insert had been struck out. When a claim has been struck out the recourse is to appeal or to apply to have it reinstated, but the plaintiff did neither. Not every claim or defence that has been struck out is permanently extinguished. In cases of default to file a defence, for example, the defendant may apply to set aside the default

judgment. A claim that has been struck out for failing to comply with an unless order is similar insofar as it was struck out without a hearing on the merits.

8 A plaintiff in such a situation may, as I have said, appeal against the decision, or to apply to set aside the striking out order. In certain situations, the plaintiff has a third option. If the cause of action has not been time-barred, it may file a new claim. In that event, the defendant may apply to strike out the claim on either the same ground if that still applies, or on the ground that it is a frivolous and vexatious claim.

9 The question that arises here, is, if a plaintiff is entitled to file his claim afresh, should he not be allowed to amend the existing one? In principle, he would be entitled to, provided that that would ensure a smoother path to a trial of the dispute and not prejudice the defendants in a manner that cannot be compensated by costs. In the present case, the plaintiff pleaded a written contract and claims that by that contract, it was to be commercial agent for the first defendant, and by the same contract, it was also to be the commercial agent for the second defendant.

10 What seems to be missing are the exact terms in the written contract that established this relationship which the plaintiff says, in its original statement of claim, remained undisclosed to them, and how and when the defendants breached those terms. These would have been a legitimate request for further and better particulars. Instead, the parties ended up fighting over the quality and quantity of what seems to me, evidence, and not facts that would enable the defendants (in this case, the second defendants) to file their defence. The second defendants nonetheless proceeded to file a defence denying that the plaintiff had been appointed the commercial agent for any of its products.

11 The massive details of individual sales that were requested and filed are matters of evidence. Instead of the evidence being struck out at this stage, the plaintiff's claim was struck out. Instead of appealing, the plaintiff applied to amend the claim to have its original claim reinstated.

12 The step taken by the plaintiff's counsel should have been avoided, and, in future, counsel should take the most appropriate route, which is either to appeal or to apply to set aside the "unless order". In the present case, even the question of leave to amend must take into account the circumstances that may tilt the court's exercise of its discretion in the applicant's favour. Counted against the plaintiff is the fact that the time for appeal has lapsed, but this is ameliorated by the fact that it is not precluded from applying for leave to appeal out of time. Some months have elapsed and are wasted, but the action is not time-barred.

13 More importantly, the claim was struck out without trial and on the basis of non-compliance with an "unless order", obtained by the second defendant on its unwarranted application for further and better particulars. Pertinently, the claim was not struck out on substantive grounds such as an abuse of process, or that it disclosed no reasonable cause of action. The purpose of an amendment of pleadings is to enable real questions or issues to be determined and tried. The proposed amendment, in my view, discloses a reasonable cause of action.

14 In this case, the claim was struck out because of the second defendant's persistence in pursuing evidence in the guise of seeking further particulars. The parties had not even reached the discovery process that might have justified the kind of answers sought by the second defendant in its application for further and better particulars.

15 Every step in the interlocutory process has its part to play in shaping the action for trial. The rules are to ensure that a claim is established one step at a time. Pleadings are meant for parties to establish facts, and discovery and interrogatories are meant for parties to gather evidence. The defendant’s application for evidence through further and better particulars in this case conflated the stages and led to this appeal before me. How often have we come across the lovely phrase, “to everything there is a season, a time for every purpose under heaven”, and, yet eschewing the proper progression of procedure, rush to have everything, everywhere, all at once. The rules may change, but the path remains the same, and we can but take only one step at a time.

16 For these reasons I allow the appeal and direct that costs here and below be reserved to the trial judge.

- Sgd -
Choo Han Teck
Judge of the High Court

Lim Tean (Carson Law Chambers) for plaintiff/appellant
Joanna Chew Liying (Braddell Brothers LLP) for second
defendant/respondent