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

[2023] SGHC 44

Suit No 465 of 2021
(Registrar's Appeal No 8 of 2023)

Between

Yeo Su Lan (Yang Shulan)

… *Plaintiff*

And

(1) Thomas Hong
(2) Tan Li Khim (Chen Liqin)
(3) Soup Empire Holdings Pte Ltd

… *Defendants*

Counterclaim of 1st Defendant, 2nd Defendant and 3rd Defendant

Between

(1) Thomas Hong
(2) Tan Li Khim (Chen Liqin)
(3) Soup Empire Holdings Pte Ltd

… *Plaintiffs in Counterclaim*

And

(1) Yeo Su Lan (Yang Shulan)
(2) Lim Cheng San
(3) Teo Li Lian (Zhang Lilian)
(4) W Food Empire Pte Ltd
(5) The Dim Sum Place (CCP) II Pte Ltd

… *Defendants in Counterclaim*

GROUNDS OF DECISION

[Civil Procedure — Parties — Joinder — Whether co-plaintiffs may be joined to a counterclaim]
[Civil Procedure — Parties — Consolidation]

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1 February 2023

24 February 2023

Goh Yihan JC:

1 This is the third defendant's appeal against the decision of the learned Assistant Registrar Kenneth Wang ("the AR") in HC/SUM 4175/2022 ("SUM 4175") to dismiss its application for the consolidation of HC/S 877/2021 ("Suit 877") with the present suit, HC/S 465/2021 ("Suit 465"). At the end of the hearing before me on 1 February 2023, I dismissed the third defendant's appeal and upheld the AR's decision. I also affirmed the AR's order for the two suits to be heard one immediately after the other, with the administrative details as to the sequence and other matters to be dealt with at the next pre-trial conference. But because this appeal raised the novel issue of whether a court can join a co-plaintiff in a counterclaim who is otherwise a third party to the main claim, I now provide my views on, among others, this issue in these grounds.

Background facts to the present appeal

2 I begin with the relevant background facts to the present appeal. As is clear, Suit 465 and Suit 877 were in issue. Suit 465 is a claim by the nominal shareholder, Ms Yeo Su Lan (Yang Shulan) ("YSL"), for minority oppression against the first defendant, Mr Thomas Hong ("Thomas"), the second defendant, Ms Tan Li Khim (Chen Liqin) ("TLK"), and the third defendant, Soup Empire Holdings Pte Ltd ("SEH"). It is helpful to set out a brief summary of SEH which explains why YSL is a nominal shareholder. SEH is in the food and beverage industry. SEH was co-founded by Thomas and Mr Lim Cheng San ("Edger"). Thomas and Edger hold shares beneficially in SEH through a trust arrangement with TLK and YSL, who are the only two shareholders of SEH. TLK and YSL hold 60.4% and 39.6% of the shares in SEH on trust for Thomas and Edger, respectively. This therefore explains why YSL is the plaintiff in Suit 465 and not Edger. Indeed, Edger is not named as a plaintiff in Suit 465 even though he, for all intents and purposes, is the main protagonist in these matters together with Thomas.

3 In response to YSL's claim in Suit 465, Thomas caused SEH to bring a counterclaim ("the Counterclaim") against YSL and four other defendants. The Counterclaim alleged that the defendants conspired to use unlawful means to injure SEH's business. In so far as the defendants in the Counterclaim are concerned, the second defendant is Edger, the third defendant is Ms Teo Li Lian (Zhang Lilian) ("Zhang Lilian"), who is the *de facto* owner of the fourth defendant, W Food Empire Pte Ltd ("WFE"), which in turn is a company that runs a food business in competition with SEH, and the fifth defendant is The Dim Sum Place (CCP) II Pte Ltd ("DSP"), which is a wholly owned subsidiary of the fourth defendant.

4 At this point, it is significant to note that one of the alleged conspirators is Mr Cheong Chee Wai ("James"). James was a former employee at SEH and its group of companies. He served as Director of Operations. Despite being portrayed as a major participant in the alleged conspiracy in the Counterclaim, James was not named as a defendant in the Counterclaim. It is not necessary to speculate why SEH did not do this, although YSL did suggest that this was because SEH was under the mistaken belief that it needed to seek leave to bring James as a defendant given that he is an undischarged bankrupt. But what SEH did do next was significant. SEH, together with two other plaintiffs, commenced Suit 877 as a *separate* suit against James and his wife, Ms Yen Mei Ling ("YML"). The other two plaintiffs in Suit 877 are the companies Lao Huo Tang Restaurant Pte Ltd ("LHTR") and Lao Huo Tang Group Pte Ltd ("LHTG"). These companies are wholly owned subsidiaries of SEH.

5 The main cause of action against James in Suit 877 is for the alleged breach of his implied duties of good faith and fidelity, or his duties as an employee. These duties were allegedly owed to SEH, LHTR, and LHTG. Apart from this, a second cause of action against James in Suit 877 is for the tort of malicious falsehood. As against YML, the causes of action against her in Suit 877 are two-fold: (a) breach of the fiduciary duties and obligations under s 157 of the Companies Act 1967 (2020 Rev Ed) ("Companies Act") in her capacity as a director of LHTR, and (b) breach of a resulting trust by her keeping of the sale proceeds from the sale of a vehicle owned by LHTR. There was no allegation in either Suit 465 or Suit 877 that YML was a participant in the alleged conspiracy to injure SEH's business.

6 While Suit 465 is moving along to trial, there has already been a default judgment entered against James in Suit 877. This is because James did not enter a defence in Suit 877. He had not entered a defence because, as an undischarged

bankrupt, he needed to seek the Official Assignee's sanction to defend Suit 877 but did not succeed in doing so. The plaintiffs in Suit 877 therefore sought to and succeeded in entering judgment in default of defence against James, but only with respect to the cause of action in relation to his breach of his various duties, with the assessment of damages to be done after the conclusion of Suit 465. Default judgment was not entered against James with respect to his alleged commission of the tort of malicious falsehood because the court was not satisfied that all the elements of the tort were made out in the pleadings. As such, it is clear that only three causes of action remain in Suit 877, namely, those of (a) malicious falsehood against James, (b) breach of director's duties against YML, and (c) breach of a resulting trust against YML.

7 It was in these general circumstances that SEH brought SUM 4175 to consolidate Suit 877 with Suit 465. SUM 4175 was opposed by all the defendants in the Counterclaim.

SEH's arguments in favour of consolidation

8 While not wholly clear from its submissions, it appeared to me that SEH made five substantive arguments in favour of consolidation in SUM 4175. It maintained these arguments for this appeal.

9 First, SEH argued that, as a matter of law, a party may be joined as a defendant to a claim so that it can proceed as a plaintiff in the counterclaim against the plaintiff in the main suit. SEH had made this argument as it recognised that if it succeeded in its application for consolidation, that would necessarily entail joining LHTR and LHTG as defendants in Suit 465, so that they in turn can join SEH as plaintiffs in the Counterclaim. In this regard, SEH submitted that the English Court of Appeal decision of *Montgomery v Foy,*

Morgan & Co [1895] 2 QB 321 ("*Montgomery*") supported its proposition, as opposed to other conflicting authorities.

10 Second, SEH argued that consolidation should be ordered because the facts underpinning the allegations in Suit 465 and Suit 877 were the same. In particular, SEH said that James was referred to as a co-conspirator in SEH's counterclaim to Suit 465, alongside the defendants in the Counterclaim. Thus, SEH said that any facts found against the co-conspirators in Suit 465 would have a bearing against James, and potentially against YML, in Suit 877. Further, SEH submitted that the legal questions of whether these facts satisfied the legal requirement of conspiracy would have to be determined together across both Suit 465 and Suit 877.

11 Third, SEH argued that the parties who opposed consolidation in SUM 4175 were previously in favour of, and had actively pushed for, consolidation. In this regard, SEH had explained that SUM 4175 had come about because Edger's and YML's lawyers had allegedly pushed for consolidation in a letter dated 17 May 2022. SEH further explained that its lawyers "took the cue" from the Senior Assistant Registrar's comment at a pre-trial conference that "the [d]efendants in Suit 877 would become parties to Suit 465" to mean that she preferred the consolidation of Suit 877 with Suit 465. In essence, SEH was not happy that while the other parties were seemingly in favour of consolidation previously, they had in SUM 4175 inexplicably resiled from their previous position.

12 Fourth, SEH argued that the default judgment against James did not render consolidation unnecessary. This is because SEH's case against the defendants in the Counterclaim is that they had acted in concert against SEH's best interests by, among others, disclosing confidential information or business

secrets to the fourth and fifth defendants therein. Thus, SEH submitted that the key issue was whether James acted in concert with Edger, WFE, and DSP, and not whether James acted in concert with YML. By this argument, Suit 465 needs to be consolidated with Suit 877. This is to enable the court to make a relevant finding as to the conspiracy between the parties. In this regard, SEH argued that the default judgment in Suit 877 against James did not make any finding of fact as to whether the parties were acting in concert or conspiracy.

13 Fifth, and finally, SEH argued that consolidation is practical and expedient since the existing defendants in the Counterclaim would not have to address the issues raised in Suit 877 in their respective affidavits of evidence-in-chief ("AEICs"). Further, SEH explained that this was really a simple question of case management and parties would be able to plan the trial timetable so that the relevant issues are dealt with separately.

The relevant issues

14 I turn then to the relevant issues in this appeal. For the purposes of these grounds, it is not necessary for me to summarise the counterarguments made by the defendants to the Counterclaim. I shall refer to these in the course of discussing SEH's arguments in support of consolidation.

15 In considering the relevant issues, it was important to keep in mind that, as SEH itself recognised, the effect consolidating Suit 877 with Suit 465 would entail joining LHTR and LHTG as defendants in Suit 465, so that they can in turn join SEH as plaintiffs in the Counterclaim. This meant that the provisions in the Rules of Court (2014 Rev Ed) ("ROC 2014") in relation to joinder of parties potentially applied *in addition* to those in relation to the consolidation of causes or matters.

16 Accordingly, I dealt with consolidation as a threshold issue: if SEH did not convince me that Suit 877 should be consolidated with Suit 465 based on the principles in relation to consolidation, then that would be the end of the matter. There would be no need for me to consider whether it was legally permissible to join LHTR and LHTG as defendants in Suit 465 so that they can pursue the Counterclaim as co-plaintiffs with SEH. However, if SEH did convince me that Suit 877 should be consolidated with Suit 465, then I would need to deal with the legal permissibility of joining LHTR and LHTG. With this in mind, SEH's arguments, as well as the counterarguments against them, raised two main issues:

(a) first, whether, pursuant to O 4 r 1 of the ROC 2014, Suit 877 should be consolidated with Suit 465; and

(b) second, if Suit 877 should be consolidated with Suit 465, then, since the effect of such consolidation is to join LHTR and LHTG as defendants in Suit 465, whether it was legally permissible under O 15 r 3 of the ROC 2014 to join third parties to Suit 465 as plaintiffs in the Counterclaim?

Whether, pursuant to O 4 r 1 of the ROC 2014, Suit 877 should be consolidated with Suit 465?

The relevant principles

17 I began with the relevant principles on the consolidation of causes or matters. The starting point I took was O 4 r 1(1) of the ROC 2014, which provides as follows:

> **Consolidation, *etc.*, of causes or matters (O.4, r.1)**
>
> **1.—**(1) Where 2 or more causes or matters are pending, then, if it appears to the Court—

> (*a*) that some common question of law or fact arises in both or all of them;
>
> (*b*) that the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions; or
>
> (*c*) that for some other reason it is desirable to make an order under this Rule,
>
> the Court may order those causes or matters to be consolidated on such terms as it thinks just or may order them to be tried at the same time or one immediately after another or may order any of them to be stayed until after the determination of any other of them.

While not relevant in the present appeal, I observed that O 4 r 1(1) of the ROC 2014 is framed in substantively the same terms as O 9 r 11 of the Rules of Court 2021 ("ROC 2021"). In my view, there is no reason why the well-established principles in relation to O 4 r 1(1) of the ROC 2014 should not, subject to the Ideals in O 3 r 1 of the ROC 2021, apply equally to O 9 r 11 of the ROC 2021.

18 In this regard, the relevant principles relating to O 4 r 1(1) of the ROC 2014 were not disputed by the parties. In the Court of Appeal decision of *Lai Swee Lin Linda v Attorney-General* [2006] 2 SLR(R) 565, Andrew Phang Boon Leong JC (as he then was) stated that (at [21]), as a preliminary point, the power of consolidation under O 4 r 1(1) is discretionary such that there is no automatic right on the part of an applicant to consolidate proceedings the moment a common question of fact arises. Further to this, the learned judge explained (at [22]) that the main rationale underlying the consolidation of proceedings under this rule "is to ensure an efficient hearing of related actions under a common 'umbrella'". Thus, in the earlier High Court decision of *Lee Kuan Yew v Tang Liang Hong and another and other actions* [1997] 2 SLR(R) 141 ("*Lee Kuan Yew*"), Lai Kew Chai J held (at [4]) that the purpose of O 4 r 1(1) was "to save costs, time and effort and for reasons of convenience in the

handling of the hearing of several actions which are linked by one of the common threads provided in the rules".

19 As such, the application of O 4 r 1(1) proceeds in two stages. First, an applicant has to show that he or she satisfies one of the three alternative grounds for consolidation provided in O 4 r 1(1). While the grounds in O 4 r 1(1)(*a*) and O 4 r 1(1)(*b*) are largely self-explanatory, it should be noted that the clause in O 4 r 1(1)(*c*) is a catch-all meant to cater for any other relevant ground. However, in the spirit of a harmonious interpretation of O 4 r 1(1), the ground advanced under O 4 r 1(1)(*c*) must obviously be of a similar grain to the grounds expressly provided for in O 4 r 1(1)(*a*) and O 4 r 1(1)(*b*). Second, even if an applicant can come within one of the three grounds in O 4 r 1(1), he or she would still need to convince the court that the consolidation of the causes or matters would satisfy the purpose of O 4 r 1(1), which is principally "to save costs, time and effort and for reasons of convenience" (see *Lee Kuan Yew* at [4]). In particular, even if there is a common issue in the two matters, it may still be inappropriate to consolidate them where there are distinctive differences between the matters in issue, having regard to the different defences put forward (see the English Court of Appeal decision of *Daws v Daily Sketch and Daily Graphic Ltd and another* [1960] 1 WLR 126 at 130).

My decision: Suit 877 should not be consolidated with Suit 465

20 With these principles in mind, I decided that Suit 877 should not be consolidated with Suit 465 for the following reasons.

SEH did not come within a ground for consolidation under O 4 r 1(1)

21 Turning to the first stage in the application of O 4 r 1(1), I did not think that SEH showed that it came within one of the grounds to justify consolidation.

22 First, I was not convinced that there was, pursuant to the ground in O 4 r 1(1)(*a*), a common question of law or fact that arose in Suit 465 and Suit 877. In this regard, I disagreed with SEH that the default judgment against James was not relevant to my consideration of whether to order consolidation. In my view, the default judgment was important because it made clear that what remained to be determined in Suit 877 in respect of James was his liability for the tort of malicious falsehood. Also, I did not think that SEH's cause of action for conspiracy in Suit 465 was wholly dependent on it establishing James's involvement. Were this otherwise, SEH would surely have been advised to bring James in as a defendant in Suit 465 much earlier in those proceedings. Returning to SEH's cause of action for malicious falsehood, the allegation in Suit 877 is that James had published false statements to the companies' employees and their mall leasing contacts. However, the facts which were pleaded to support this particular cause of action in Suit 877 were *not* replicated in other parts of Suit 877 or in Suit 465. Accordingly, I accepted that the cause of action against James for malicious falsehood was meant to stand alone within Suit 877 and, importantly, apart from Suit 465.

23 As for the causes of action against YML in Suit 877, it was again clear that these (relating to breach of directors' duties and breach of a resulting trust) did not overlap with any of the allegations of conspiracy made against the defendants in the Counterclaim. In this regard, the cause of action for breach of directors' duties related primarily to whether YML neglected to prevent James from carrying out any of the alleged errant acts against LHTR. This would not be relevant to the issues in Suit 465. Similarly, the cause of action for breach of a resulting trust concerned the proceeds of a vehicle that YML allegedly sold wrongfully. Again, this would not be relevant to the issues in Suit 465. In essence, YML's defence in responding to these causes of action against her in

Suit 877 would be quite different from those of the defendants to the Counterclaim. Accordingly, I concluded that there was no common question of law or fact that arose in both Suit 465 and Suit 877.

24 Second, I also did not think that SEH came within the ground in O 4 r 1(1)(*b*). It was clear to me that the alleged rights to reliefs claimed were not in respect of, nor did they arise out of, the same transaction or series of transactions. The alleged facts relating to the rights to reliefs claimed against YML in Suit 877 are, namely, (a) breach of her fiduciary duties and obligations owed to LHTR under s 157 of the Companies Act, and (b) breach of a resulting trust by her keeping of the sale proceeds from the sale of a vehicle owned by LHTR. These causes of action arose out of a separate and distinct transaction from that of the conspiracy alleged in the Counterclaim which, in contrast, involved YEL, Edger, Zhang Lilian, WFE, and DSP, and their alleged usurpation of SEH's leasing opportunity at Changi City Point mall. Accordingly, I concluded that SEH did not come within the ground in O 4 r 1(1)(*b*).

25 Third, and for completeness, I likewise did not think that SEH raised any other reason to render it desirable to make an order for consolidation. In this regard, I considered SEH's argument that the parties who opposed consolidation in SUM 4175 were previously in favour of, and had actively pushed for, consolidation. In my view, this argument did not amount to a good reason for consolidation for two reasons. First, until and unless they are bound by a court order for consolidation, these other parties are free to change their minds, even if they had supported consolidation in the first place. Second, apart from its complaints about how it was inexplicable that these other parties had resiled from their previous (alleged) support for consolidation, SEH did not provide a

legal basis for why this should matter. Indeed, unless SEH was raising a point of estoppel, which it did not, I could not see how it could make out a legal basis for how the other parties' prior conduct somehow bound them in relation to consolidation.

26 As such, since SEH did not succeed in coming within one of the grounds in O 4 r 1(1) for a court to consider if consolidation was appropriate, its appeal must be dismissed on this basis alone.

SEH did not show why a consolidation would save costs, time, and effort

27 In any event, I was also of the view that SEH failed to show why a consolidation would save costs, time, and effort. Indeed, like the learned AR, I could not see any saving of costs or gain in efficiency by consolidating Suit 877 with Suit 465 now.

28 First, it was clear to me that an order for consolidation would delay, and not make efficient, the resolution of the dispute between the parties. In this regard, I disagreed with SEH that the existing defendants in the Counterclaim would not have to address the issues raised in Suit 877 in their respective AEICs. If, as SEH argued, there were common issues raised in Suit 465 and Suit 877, then surely these defendants would need to address those issues in their evidence. And if, as SEH stated, there was no need for them to address the issues in Suit 877 in their evidence, then this would surely show (as I had found) that there was no basis for consolidation in the first place.

29 Moreover, Suit 465 was begun in May 2021. At the hearing of this appeal, the parties were close to trial after extensive amendments to the pleadings. If Suit 877 were consolidated with Suit 465 at this point, that would

certainly delay Suit 465 from proceeding to trial. Indeed, such consolidation may well reopen applications among the various parties for, among others, further and better particulars, discovery, and so forth. All of these would not be warranted given that there were, in my view, no overlapping issues between Suit 465 and Suit 877. There was no doubt in my mind that consolidating Suit 877 with Suit 465 would in fact lead to increased time and effort for all the parties concerned.

30 Second, given that the causes of action in Suit 877 do not overlap with those in Suit 465, a consolidation would lead to significant costs wasted. This is because the defendants in the Counterclaim would require their counsel to sit through additional days of trial dealing with matters raised in Suit 877 that do not involve them at all. Similarly, YML's counsel would also have to sit through a major part of Suit 465 which do not concern her at all.

31 As such, I concluded that SEH failed to show why a consolidation would save costs, time, and effort. Its appeal thus also failed on this basis.

Whether it would have been legally permissible to join third parties to Suit 465 as plaintiffs in the Counterclaim?

32 Given my conclusion in the preceding section, it was not necessary for me to consider whether it would have been legally permissible to join third parties to Suit 465 as plaintiffs in the Counterclaim. As I have explained above, this issue arose because SEH's application for consolidation was, in effect, one for joinder of LHTR and LHTG as defendants to Suit 465 so that they can join SEH as plaintiffs in the Counterclaim.

33 However, since the parties had made extensive submissions on this issue, and the learned AR had also set out his views at some length in

SUM 4175, I take the opportunity in these grounds to set out my views on this issue. I should note that while my views concern the application of O 15 r 2, O 15 r 3, O 15 r 4, and O 15 r 6(2)(*b*) of the ROC 2014, they may have some relevance to the ROC 2021, although it is arguable that the ROC 2021 has simplified matters, for reasons which I will elaborate below.

The counterarguments against SEH's arguments

34 The third, fourth, and fifth defendants in the Counterclaim made extensive arguments against SEH's argument that it was legally permissible to join third parties to Suit 465 as plaintiffs in the Counterclaim. For convenience, and since the other defendants in the Counterclaim did not disagree with these arguments, I will simply refer to these arguments as being put forward by the defendants in the Counterclaim. As a starting point, the defendants in the Counterclaim drew reference to O 15 r 2(1) of the ROC 2014, which provides as follows:

> **Counterclaim against plaintiff (O.15, r.2)**
>
> **2.—**(1) Subject to Rule 5(2), a defendant in any action who alleges that he has any claim or is entitled to any relief or remedy against a plaintiff in the action in respect of any matter (whenever and however arising) may, instead of bringing a separate action, make a counterclaim in respect of that matter; and where he does so he must add the counterclaim to his defence.

35 The defendants in the Counterclaim submitted that the effect of the rule is two-fold. First, O 15 r 2(1) does not allow a third party to the suit to join the defendant as a co-plaintiff in the counterclaim. Rather, the rule is quite specific in only permitting a defendant in the action brought by the plaintiff to make a counterclaim on any matter. Second, given that O 15 r 2(1) provides that a counterclaim must be appended to the defendant's defence filed in response to the claim made by the plaintiff, a third party would be unable to join the suit as

he or she would not have delivered a defence to which a counterclaim can append.

36 The defendants in the Counterclaim then brought me to O 15 r 3(1) of the ROC 2014, which provides as follows:

> **Counterclaim against additional parties (O.15, r.3)**
>
> **3.—**(1) Where a defendant to an action who makes a counterclaim against the plaintiff alleges that any other person (whether or not a party to the action) is liable to him along with the plaintiff in respect of the subject-matter of the counterclaim, or claims against such other person any relief relating to or connected with the original subject-matter of the action, then, subject to Rule 5(2), he may join that other person as a party against whom the counterclaim is made.

37 Relying on the *Singapore Civil Procedure 2021* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) ("*White Book*") (at para 15/3/2), the defendants in the Counterclaim submitted that O 15 r 3(1) is applied subject to certain conditions, the most relevant of which is that a "third person not a party cannot be joined as a co-plaintiff with defendant … nor as co-defendant with plaintiff in respect of a cause of action vested in him jointly with the defendant", but "the court may compel the plaintiff to add as co-defendant a person who has a counterclaim jointly with the original defendant". In support of this proposition, the defendants in the Counterclaim also pointed to the English Court of Appeal decision of *Pender and others v Taddei* [1898] 1 QB 798 ("*Pender*"), which was also cited in the *White Book*.

My decision: it would be legally permissible join third parties to Suit 465 as plaintiffs in the Counterclaim

38 Admittedly, I was attracted to the defendants in the Counterclaim's argument during the hearing. However, upon further reflection, I am now of the view that it would have been legally permissible to join third parties to Suit 465

as plaintiffs in the Counterclaim under the ROC 2014. I find that O 15 r 4 and O 15 r 6(2)(*b*) of the ROC 2014 provide the basis of the court's power. However, I should clarify, as I had indicated to the parties after the hearing, that my decision to dismiss the appeal was based solely on the ground that there was simply no basis for consolidation in the first place. Indeed, I had recorded that I would render these grounds to set out my thinking on this joinder issue but did not otherwise express a conclusive view in the course of delivering my decision.

*O 15 r 4 and O 15 r 6(2)(*b*) of the ROC 2014 provide for the court's power to do so*

39 With the above clarifications in mind, in my view, the legal permissibility of joining third parties as plaintiffs in a counterclaim falls to be decided on the express provisions in the ROC 2014. Before discussing O 15 r 4 and O 15 r 6(2)(*b*), it is appropriate to first examine O 15 r 2 and O 15 r 3 and the question of how they should be interpreted, an issue which the defendants in the Counterclaim raised. As the defendants in the Counterclaim rightly pointed out, O 15 r 2 and O 15 r 3 provide for the procedure by which a defendant can make a counterclaim against a plaintiff, and how that defendant can make that counterclaim against additional parties. Yet, it does not provide for the procedure by which a defendant can jointly make a counterclaim with third parties against a plaintiff.

40 The absence of such procedure in the rules that specifically govern counterclaims was why the English Court of Appeal in *Pender* held that a third party could not be added as co-plaintiff in a counterclaim. In that case, the plaintiffs, as executors, had claimed against the defendant as acceptor for two bills of exchange. Each of these bills of exchange had been drawn by the plaintiffs' testator on behalf of himself and one Balfour. In response, the

defendant entered a defence. The defendant also counterclaimed, claiming damages for breach of a contract by the plaintiffs' testator and Balfour for the purchase of property in Italy from the defendant and one Bellani. This counterclaim was titled as being between the defendant as plaintiff, and the plaintiffs in the main suit as defendants together with Bellani. In particular, the defendant claimed from the plaintiffs a sum of money as executors of their testator and sought a declaration from all the plaintiffs and Bellani that so much of that sum as was necessary to meet any claim that the plaintiffs might have against the defendant be set off against it.

41 Bellani was not joined as a co-plaintiff to the defendant's counterclaim. The defendant's counsel took the position in arguments that there was no provision in the then prevailing Supreme Court of Judicature Act or Rules of the Supreme Court ("RSC") for joining a co-plaintiff in a counterclaim. However, the defendant's counsel argued that it would be unjust that the defendant should not be allowed to counterclaim in respect of a claim due from the plaintiff to him jointly with another person. He therefore submitted that the court should apply the old Chancery practice by which a person entitled to sue jointly with the plaintiff may, if he declines to sue, be joined as a defendant. In support of this argument, counsel cited O XXI r 11 of the then prevailing RSC, a provision similar to O 15 r 3(2) of the ROC 2014, which was reproduced in the judgment of A L Smith LJ as follows (at 801):

> … 'where a defendant by his defence sets up any counter-claim which raises questions between himself and the plaintiff along with any other persons, he shall add to the title of his defence a further title similar to the title in a statement of claim, setting forth the names of all the persons who, if such counter-claim were to be enforced by cross-action, would be defendants to such cross-action, and shall deliver his statement of defence to such of them as are parties to the action within the period within which he is required to deliver it to the plaintiff.' …

Counsel in that case also submitted that to do so would be in line with the general intention of the then prevailing Judicature Act and RSC that, where it can be done without inconvenience, all matters in controversy between the parties to an action should be determined in the same litigation, and the unnecessary expense of cross-actions be avoided, especially where the matters arise out of the same transaction.

42 However, the English Court of Appeal rejected this argument. A L Smith LJ held that, contrary to O XXI r 11 of the then prevailing RSC, the defendant was not raising a question between himself and the plaintiffs along with Bellani; rather, the defendant was raising a question between himself and along with Bellani and the plaintiffs. Since the defendant could not do the latter by the RSC, the learned judge held that the defendant should not be allowed to do this via O XXI r 11, which provided for a different situation. Similarly, Chitty LJ came to the same conclusion. The relevant part of his judgment is worth setting out in full as it is self-explanatory (at 801–802):

> … I do not hesitate to say that I think that Order XXI., r. 11, must be read in the way the Lord Justice has read it. The words of the rule can only be construed as referring to cases where the defendant raises by counter-claim questions between himself and the plaintiff along with other persons, and not as including a case where the defendant raises questions between himself along with other persons and the plaintiff. The rule only applies where the defendant could have brought a cross-action against the plaintiff and the other persons. *If the rules do not give the defendant power to counter-claim jointly with another person against the plaintiff directly, then, counter-claim being entirely the creature of the Judicature Act, I do not think he can be allowed to do the same thing indirectly in the manner proposed.* …
>
> [emphasis added]

As can be seen from Chitty LJ's judgment, the reason for the decision in *Pender* was that the court did not locate any basis under either the Judicature Act or the

then prevailing RSC to join a third party, in that case, Bellani, as a co-plaintiff in the counterclaim.

43 However, *Pender* was not followed by the English High Court in *Balkanbank v Taher and Others* (Unreported, 14 April 1995) ("*Balkanbank*"). In that case, the defendants applied to add their subsidiaries as defendants under O 15 r 6(2)(b)(i) and O 15 r 6(2)(b)(ii) of the then prevailing RSC, which was substantially similar to O 15 r 6(2)(*b*)(i) and O 15 r 6(2)(*b*)(ii) of the ROC 2014, respectively. O 15 r 6(2)(b) of the then prevailing RSC provided as follows:

> **Misjoinder and nonjoinder of parties**
>
> …
>
> (2) Subject to the provisions of this rule, at any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application—
>
> …
>
> (b) order any of the following persons to be added as a party, namely—
>
> (i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or
>
> (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

44 In finding that O 15 r 6(2)(b)(i) of the RSC allowed the court to add a third party as defendant to an action so that he might be able to counterclaim against a plaintiff together with the defendant, Clarke J distinguished *Pender* on

the basis that because the English Court of Appeal in *Pender* centred on the then O XXI r 11 of the RSC, its decision was not therefore on the true construction of O 15 r 6(2)(b)(i) of the RSC. Thus, on the basis of O 15 r 6(2)(b)(i) of the RSC, Clarke J allowed the application to add a third party as defendant to an action so that he might be able to counterclaim against the plaintiff together with the defendant. Tangentially, it is important to note that while the learned judge based his decision on O 15 r 6(2)(b)(i) of the RSC, it is appropriate to infer that O 15 r 6(2)(b)(ii), being of a broader scope, would have also covered situations where the applicant seeks to join a third party as co-plaintiff in a counterclaim. Indeed, the learned judge observed that O 15 r 6(2)(b)(ii), which was added to supplement O 15 r 6(2)(b)(i) of the RSC in 1971, was meant to widen the discretion of the court to a great extent. But more significantly, the upshot of the decisions of *Pender* and *Balkanbank* is that while the basis for joining third parties as co-plaintiffs in a counterclaim could not be located in O XXI r 11 of the RSC at the time of *Pender*, which is similar to O 15 r 3(2) of the ROC 2014, it could be found in O 15 r 6(2)(b) of the RSC at the time of *Balkanbank*, which is similar to O 15 r 6(2)(*b*) of the ROC 2014.

45 Therefore, although O 15 r 2 and O 15 r 3 of the ROC 2014 are inapplicable in the present context, I find that, more generally, there is a legal basis under O 15 r 6(2)(*b*) of the ROC 2014 for the court to join two or more persons together in one action as plaintiffs in a counterclaim in an appropriate case. That provision reads:

> **Misjoinder and nonjoinder of parties (O. 15, r. 6)**
>
> …
>
> (2) Subject to the provisions of this Rule, at any stage of the proceedings in any cause or matter, the Court may, on such terms as it thinks just and either of its own motion or on application —

> …
>
> (*b*) order any of the following persons to be added as a party, namely:
>
> > (i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in the cause or matter may be effectually and completely determined and adjudicated upon;
> >
> > (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

Indeed, there is no indication from its plain wording that this provision excludes persons from being added as co-plaintiffs in a counterclaim.

46 I derive further support for my conclusion from other foreign decisions which have applied provisions which are similar to O 15 r 6(2)(*b*) of the ROC 2014. I first turn to *Montgomery*, a decision of the English Court of Appeal. There, the action was between a plaintiff shipowner and the defendants, who were the consignees of some cargo. However, the shipper, a third-party to the action, made an application seeking to participate in the action as a defendant so that it could counterclaim against the plaintiff. The court allowed the third-party shipper's application and held that O XVI r 11 of the then prevailing RSC, which was similar to O 15 r 6(2)(*b*)(i) of the ROC 2014, allowed the joinder of the third-party shipper as defendants. That rule, as reproduced in Lord Esher MR's decision, provided (at 324):

> … the Court or a judge may make an order to add 'the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely adjudicate upon and settle all the questions involved in the cause or matter.' …

47 Lord Esher MR set out his reasons for construing the rule as such (at 324):

> … Here the matter before the Court is the contract of affreightment, and there are disputes arising out of that matter as between the plaintiff and the defendants and the company whom it is sought to add as defendants, and who were the defendants' principals in the matter. I can find no case which decides that we cannot construe the rule as enabling the Court under such circumstances to effectuate what was one of the great objects of the Judicature Acts, namely, that, *where there is one subject-matter out of which several disputes arise, all parties may be brought before the Court, and all those disputes may be determined at the same time without the delay and expense of several actions and trials.* It appears to me that the words of the rule are large enough to allow of the joinder of the British Saw Mills Company as defendants in this case. I think the question arising between them and the plaintiff is a 'question involved in the cause or matter' within the meaning of the rule. …
>
> [emphasis added]

Similarly, I find no reason why, where the dispute may be determined at the same time without the delay and expense of several actions and trials, the court may not join a person as a co-plaintiff in respect of a counterclaim pursuant to either O 15 r 4 or O 15 r 6(2)(*b*) of the ROC 2014, as the case may be.

48 An illustration of how joining third parties as co-plaintiffs in a counterclaim achieves the aforementioned end can be found in the English High Court decision of *Bentley Motors (1931) Ltd v Lagonda Ltd* [1945] 2 All ER 211. There, the action was one claiming an injunction and other relief for alleged infringement by the defendants of the plaintiff's registered trade mark. The defendants alleged, among others, that a third party, Mr Bentley, who was an employee of the defendants, was the holder of rights to use his name, Bentley, in connection with the marketing of automobiles. The defendants were not able to assert Mr Bentley's rights against the plaintiff as his rights arose out of a separate contract between the plaintiffs and Mr Bentley pertaining to the

holding of the name rights. The defendants alleged that the use of the name rights, if restrained, would constitute an infringement of Mr Bentley's rights under his contract with the plaintiffs. Evershed J granted an application under O 16 r 11 of the then prevailing RSC, which is similar to O 15 r 6(2)(*b*)(i) of the ROC 2014, to add Mr Bentley as a defendant to the action. The material words of O 16 r 11 of the then prevailing RSC, as reproduced in the learned judge's decision, were as follows (at 212E):

> The court or judge may, at any stage … order that the names of any parties … whether plaintiffs or defendants, who ought to have been joined, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added …

49 In allowing the application, Evershed J found that the rights of the plaintiffs to restrain the use of the name by the defendants involved and depended upon Mr Bentley's right to prevent the plaintiffs from committing a breach of his contract with them (at 212F). Therefore, the joinder of Mr Bentley was necessary in order that the court may effectually and completely adjudicate upon and settle all the questions involved in the claim by the plaintiffs to prevent the use by the defendants of the word "Bentley" and the alleged infringement by the defendants of the plaintiff's mark (at 212G). The learned judge further observed that one of the main objects of O 16 r 11 of the then prevailing RSC was to render unnecessary such multiplicity of proceedings that would be occasioned if the party sought to be joined must proceed by separate action to enforce his claim (at 213F–G).

50 I agree with the reasoning of Evershed J and add that such considerations are also reflected in sub paragraphs (*a*) and (*b*) to O 15 r 4(1) of the ROC 2014, which requires the court to consider if there is "some common issue of law or fact" and whether the rights to reliefs claimed "arise out of the

same transaction or series of transactions". With this in mind, I turn to O 15 r 4(1) and O 15 r 4(2), which provide as follows:

> **Joinder of parties (O. 15, r. 4)**
>
> 4.—(1) Subject to Rule 5(1), 2 or more persons may be joined together in one action as plaintiffs or as defendants with the leave of the Court or where —
>
> (*a*) if separate actions were brought by or against each of them, as the case may be, some common question of law or fact would arise in all the actions; and
>
> (*b*) all rights to relief claimed in the action (whether they are joint, several or alternative) are in respect of or arise out of the same transaction or series of transactions.
>
> (2) Where the plaintiff in any action claims any relief to which any other person is entitled jointly with him, all persons so entitled must, subject to the provisions of any written law and unless the Court gives leave to the contrary, be parties to the action and any of them who does not consent to being joined as a plaintiff must, subject to any order made by the Court on an application for leave under this paragraph, be made a defendant.
>
> …

51 Two observations may be made about O 15 r 4. First, O 15 r 4(1) is phrased in broad terms, and does not exclude the possibility of joining co-plaintiffs to a counterclaim. It has also been observed that the rule should be construed in a liberal sense (see *White Book* at para 15/4/2). Indeed, provided that the conditions mentioned in sub-paragraphs (*a*) and (*b*) of O 15 r 4(1) are met, joinder of parties is allowed as of *right*, subject to the discretionary power of the court under O 15 r 5 (see *White Book* at para 15/4/2). However, leave will be required so long as one of the conditions is not satisfied. Second, O 15 r 4(2) requires, as a general rule, that where the plaintiff in any action claims any relief to which any other person is entitled jointly with him, all persons so entitled must be parties to the action. Given that this rule is couched in mandatory terms, it follows that a defendant who makes a counterclaim must join other persons

as co-plaintiffs in respect of the counterclaim if any relief is one to which any other person is entitled jointly with him. It is therefore clear from the wording of O 15 r 4(1) and O 15 r 4(2) that these provisions provide the basis for the court's power to join persons as co-plaintiffs in respect of a counterclaim.

52 For completeness, the lack of an express rule in O 15 r 2 and O 15 r 3 of the ROC 2014 providing for third parties to be joined as co-plaintiffs in a counterclaim does not, in my view, mean that the court has no power to make such an order. The effect of O 15 r 2 and O 15 r 3, read together with the provisions on joinder reflected in O 15 r 4 and O 15 r 6(2)(*b*), is that if a defendant wishes to join other persons as co-plaintiffs in his counterclaim, a separate application for joinder should be made *in addition to* the filing of the counterclaim. While it is curious that O 15 r 3 only speaks of counterclaims *against* additional parties, and not counterclaims *with* additional parties, one explanation for this might be that O 15 r 3 is primarily concerned with the requirement of *service* on parties who are sought to be made co-defendants in the counterclaim, which in turn gives notice of the proceedings to such parties. This is clear from the detailed procedure relating to service as set out from O 15 r 3(2) to O 15 r 3(5). In contrast, in the context of joining third parties as co-plaintiffs to a counterclaim, the requirement of service (and thereby giving notice) does not feature as strongly since any relief or remedy claimed is not sought against such parties. In my view, this explains the absence of any mention of co-plaintiffs in a counterclaim in O 15 r 3, an absence which should not be understood as suggesting that the ROC 2014 does not allow for third parties to be joined as co-plaintiffs in a counterclaim.

53 Returning to the facts of this application, even on my view that O 15 r 4 and O 15 r 6(2)(*b*) provide for the court's power to join persons as co-plaintiffs

in a counterclaim, I found that it would not have made a difference to my conclusion that LHTR and LHTG should not be added as co-plaintiffs to SEH's Counterclaim. From my conclusions earlier (see [22]−[24] above), there was no common issue of law and fact that would arise in all the actions. Neither did the rights to reliefs claimed arise out of the same transaction or series of transactions. Therefore, joinder could not be ordered as of right under O 15 r 4(1) of the ROC 2014. As regards O 15 r 6(2)(*b*), consistent with my conclusions earlier, it follows that joinder would not be necessary to ensure that all matters arising in the Counterclaim and Suit 877 would be effectually and completely determined and adjudicated upon. Neither was there a question or issue arising out of, relating to, or connected with any relief or remedy claimed in the Counterclaim and Suit 877 such that it would be just and convenient to determine the question or issue as between LHTR and LHTG, and SEH and the defendants in the Counterclaim, in a single action (for the same reasons expressed in [27]−[31] above).

Observations on the applicable principles in the ROC 2021

54 I conclude with some brief observations on the ROC 2021 in the context of joining third parties as co-plaintiffs in a counterclaim. In contrast to the extensive provisions in O 15 r 2 and O 15 r 3 of the ROC 2014, the ROC 2021 now simply provides that if the defendant intends to counterclaim against the claimant, the defendant must file and serve the counterclaim with the defence (O 6 r 8(1)) and that the counterclaim must be in Form 13 (O 6 r 8(2)). Moreover, O 6 r 9 of the ROC 2021 only expressly refers to the "claimant" (in contrast to other co-defendants in a counterclaim) in detailing the procedure for the form and service of defence to the counterclaim. The ROC 2021 is silent on whether there are any specific rules governing the adding or removing of parties in a counterclaim. At first glance, the scope of what is expressly covered in the

ROC 2021 appears to be even narrower than what is provided for in the ROC 2014.

55 However, I am not inclined to think that the scope of the ROC 2021 should be interpreted more narrowly than the ROC 2014 in relation to the joining of third parties as co-claimants or co-defendants in a counterclaim. To begin with, there are general provisions in the ROC 2021 governing the adding and removal of parties, as well as the consolidation of causes or matters, which are now found in O 9 r 10 and O 9 r 11, respectively. In relation to the adding or removal of parties, O 9 r 10(1) provides that "[t]he Court may add or remove one or more *claimants* or *defendants*…" [emphasis added]. Importantly, "claimant" includes a party in the position of a claimant in a counterclaim; likewise, "defendant" includes a party in the position of a defendant in a counterclaim (O 1 r 3(1)). Reading O 9 r 10(1) together with the definitions in O 1 r 3(1), it follows that both claimants and defendants may be added to a counterclaim. Indeed, it is consistent with this conclusion that *Pender*, a decision that says that third parties may not be added as co-plaintiffs in a counterclaim, is no longer referred to in the discussion of the equivalent of O 15 r 3 in the ROC 2021 (see *Singapore Civil Procedure 2022* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2022)).

56 In this connection, I also agreed with the learned AR that there are good reasons why third parties can be joined as plaintiffs in a counterclaim in the context of the ROC 2014. With respect, I can do no better than the learned AR in articulating the reasons why, and I set out his reasoning below:[1]

> First, I consider that whether a claim is a main claim or a counterclaim is often a function of luck and timing. What the defendant can do if he were the plaintiff in the main claim, he

[1] Certified Transcript of 22 December 2022 at p 15.

> should be able to do as the plaintiff in counterclaim. Second, the ROC permits (a) the CC to have no link to the main claim, and (b) the co-defendants in the CC to be strangers to the main claim, as is the case in [Suit] 465. If so, then why does the position differ when the strangers are co-Plaintiff in the CC rather than co-Defendant? Third, to the extent that one might be concerned that only [a] defendant may file a Defence, and a CC must be included in a Defence, and therefore it seems that a plaintiff to a CC must also be a defendant, I find this chain of logic unpersuasive. The Defence may be filed by the defendant, with the co-plaintiff joining the Defendant only for the part of the Defence that forms the Statement of Claim for the CC. It is not unusual or unfamiliar in any way for these Defences to be segmented and delineated into Defence and Counterclaim. In fact, it must be possible to do so because there is no rule that the CC must be linked to the claim at all. This means that the co-plaintiff to be added can join in only for one portion of that Defence and Counterclaim rather than its whole. …

57 To these observations, I would add that allowing both claimants and defendants to be added to a counterclaim would be in line with the Ideals in O 3 r 1 of the ROC 2021, two of which are expeditious proceedings and the efficient use of court resources. Conceivably, situations might arise where it would avoid multiplicity of proceedings and waste of court resources to simply join third parties as a co-plaintiffs or co-defendants in a counterclaim. In such cases, it would be preferable for those parties to be joined in a counterclaim for the claims to be dealt with as a single action rather than as separate actions. However, as the interpretation of the ROC 2021 was not before me, I say no more.

Conclusion

58 For all these reasons, I dismissed the third defendant's appeal and upheld the learned AR's decision in SUM 4175. For the avoidance of doubt, I also affirmed the AR's order for Suit 465 and Suit 877 to be heard one immediately after the other, with the administrative details as to the sequence and other matters to be dealt with at the next pre-trial conference.

Goh Yihan
Judicial Commissioner

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