Henan Province Construction Group Corp Ltd (Singapore Branch) (formerly trading as Henan Province Construction Corp (Singapore Branch)) and another *v* Evanbuild Engineering Pte Ltd
[2012] SGHC 231

Case Number	: District Court Suit No 3636 of 2011(Registrar's Appeal from the Subordinate Courts No 175 of 2012)
Decision Date	: 19 November 2012
Tribunal/Court	: High Court
Coram	: Choo Han Teck J
Counsel Name(s)	: Raj Singh Shergill (Lee Shergill LLP) for the first and second plaintiffs; Tan Lam Siong (Temple Counsel LLP) for the defendant.
Parties	: Henan Province Construction Group Corp Ltd (Singapore Branch) (formerly trading as Henan Province Construction Corp (Singapore Branch)) and another — Evanbuild Engineering Pte Ltd

Civil Procedure – pleadings – amendments

19 November 2012

Choo Han Teck J:

1 The first plaintiff is the branch office of a foreign company in Singapore. The second plaintiff is a Singapore company. The two plaintiffs are carrying on the business of labour supply. The defendant is a Singapore company carrying on the business of building construction. Sometime in 2006 the defendant had a building project at Pandan Road. It contracted with the second plaintiff for the supply of labour. The second plaintiff, in turn, contracted with the first plaintiff and obtained two workers who were then contracted to the defendant. One of the two workers, Chai Cheng Lei ("Chai"), was injured in the course of working for the defendant at its Pandan Road project. Chai sued the first plaintiff in DC Suit 4211 of 2007 ("DC Suit 4211") for damages. He did not sue the second plaintiff or the defendant. The insurance company MSIG Insurance (S) Pte Ltd was named as third party.

2 The first plaintiff, as defendant in DC Suit 4211 did not plead contributory negligence, and on 22 May 2009, District Judge Kathryn-Low gave judgment to Chai against the first plaintiff for 100%. Damages were then assessed and on 9 June 2010, final judgment was entered against the first plaintiff in the sum of $101,859.85 plus interest at $2,559.70 and costs fixed at $27,820. The first plaintiff's appeal against the damages awarded was dismissed on 26 August 2010.

3 The first plaintiff now, jointly with the second plaintiff, sued the defendant in this action (DC Suit 3636 of 2011) for an indemnity or a contribution (under the Civil Law Act, Cap 43, 1999 Rev Ed) of the damages that the first plaintiff had been ordered to pay to Chai. The present matter before me was an appeal by the first and second plaintiffs against the dismissal of their application to amend the Statement of Claim in DC Suit 3636 of 2011. Before me, Mr Raj Singh Shergill ("Mr Raj") appeared on behalf of the plaintiffs and explained that he had taken over the matter from the plaintiffs' previous solicitor Mr Leonard Loo ("Mr Loo"). Counsel also explained that the plaintiffs were compelled to sue the defendant because it transpired that the insurance policy for the first plaintiff did not cover the first plaintiff's liability in DC Suit 4211.

4 The plaintiffs were now also compelled to amend the Statement of Claim to assert a claim for relief for the second plaintiff because there was virtually no claim by the second plaintiff in the statement of claim (though it was named a plaintiff) against the defendant. Mr Raj explained that the second plaintiff had paid the judgment sum on behalf of the first plaintiff so any contribution or indemnity by the defendant should be paid to the second plaintiff. The other amendments sought were not pleadings but evidence and the plaintiffs' appeal in that respect failed on that ground. Insofar as the application was to amend the claim so as to enable the second plaintiff to claim relief, the court below dismissed the plaintiffs' application on the ground of abuse of process. After hearing Mr Tan Lam Siong for the defendant and Mr Raj's explanation, I dismissed the present application (without prejudice to the trial judge's discretion to allow any amendments at trial if it should go that far).

5 It will be obvious to any reasonable lawyer from the narrative above that the defendant ought to have been made a party at the trial of DC Suit 4211. It was then disclosed to me that Mr Loo, the first plaintiff's lawyer applied, *ex parte*, for leave to issue a third party notice against the second plaintiff only after judgment had been handed down by the trial judge. It was not clear who appeared for the second plaintiff, but Mr Raj conceded that the first and second plaintiffs were and still are very closely connected. Indeed, he appeared for both plaintiffs as had Mr Loo. Having being served with the third party notice, the second plaintiff, instead of objecting, entered appearance and through Mr Loo, applied again, *ex parte*, for a fourth party notice to be issued against the defendant. Only after it was served did the defendant realise that there was an action by Chai. It also discovered that the action was already heard and judgment had been entered. The defendant then applied to strike out the second plaintiff's fourth party notice. That application was granted and, consequently, the plaintiffs commenced this action against the defendant.

6 It is not known whether the first and second plaintiffs acted in concert throughout or that this was a matter in which their solicitor acted to rectify his own error in not proceeding against the defendant sooner. Having embarked on a fresh action in such circumstances, it behoved the plaintiffs to get it right. They did not, though Mr Raj demurred that he was not the solicitor in charge at the start. It is thus not right for the plaintiffs to proceed with the present application for an amendment of the statement of claim. The full story may emerge if Mr Loo testifies, but according to Mr Raj, Mr Loo cannot be contacted. That is no fault of the defendant and all the more reason why it should not be drawn into litigation hindered by so many events that have passed with neither their knowledge nor control. If the plaintiffs are truly blameless, they may have recourse elsewhere.