

Tan Chin Lay Evelyn v Cheng Soo May Stacy
[2018] SGHC 240

Case Number : Suit No 661 of 2015 (Registrar's Appeal Nos 146 and 147 of 2018)
Decision Date : 07 November 2018
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : The plaintiff by original action and defendant in counterclaim in person; Chenthil Kumar Kumarasingam and Goh Peizhi, Adeline (Oon & Bazul LLP) for the defendant by original action and plaintiff in counterclaim.
Parties : Tan Chin Lay Evelyn — Cheng Soo May Stacy

Civil Procedure – Pleadings – Amendment

[LawNet Editorial Note: The appellant's appeal in Civil Appeal No 157 of 2018 was dismissed by the Court of Appeal on 6 August 2019 with no written grounds of decision rendered. The Court of Appeal agreed with the reasoning and findings of the Judge below. In particular, the Court of Appeal agreed with the Judge's conclusion that none of the disputed amendments would have the effect of adding or substituting a new cause of action, and therefore could not be appealed against. As for the other grounds of appeal, the Court of Appeal noted that they fell outside the scope of this decision and therefore could not be appealed against.]

7 November 2018

Woo Bih Li J:

Introduction

1 The plaintiff was a financial services consultant ("FSC") with the Singapore branch of American International Assurance Company, Limited and with AIA Singapore Private Limited (collectively referred to as "AIA"). [\[note: 1\]](#) AIA organised its FSCs into agencies headed by district managers ("DMs"). [\[note: 2\]](#) The defendant was a DM and the plaintiff was a member of the defendant's agency from 5 August 2008 to 19 March 2010. [\[note: 3\]](#) Between them, the plaintiff and the defendant also formed a contract to govern their FSC-DM partnership. [\[note: 4\]](#) Suit No 661 of 2015 is the plaintiff's action against the defendant for, *inter alia*, damages for breach of the contract between them.

2 The plaintiff disputed parts of the defendant's pleading in Defence and Counterclaim (Amendment No 2) ("DC Am2") (which later became Defence and Counterclaim (Amendment No 3) ("DC Am3")), on the basis that they were not consequential to amendments the plaintiff had herself made to and included in her Statement of Claim (Amendment No 1) ("SOC Am1"). Consequently, this led to various applications and appeals which I shall elaborate on below.

3 The latest appeals were Registrar's Appeal No 146 of 2018 ("RA 146/2018") and Registrar's Appeal No 147 of 2018 ("RA 147/2018") filed by the plaintiff and defendant respectively. I dismissed both appeals on 30 July 2018.

4 The plaintiff has appealed against my decision in respect of RA 146/2018. On 29 August 2018,

she filed Civil Appeal No 157 of 2018 ("CA 157/2018") to the Court of Appeal pursuant to para (g) of the Fourth Schedule to the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed). However, in her notice of appeal ("CA 157/2018 NOA"), she asked for orders on matters that were outside the scope of the appeal in RA 146/2018 and hence, outside the scope of my decision in that appeal. Except for para 8(d) of DC Am3, the other parts of the pleading in DC Am3 mentioned in CA 157/2018 NOA were outside the scope of RA 146/2018. These were, *inter alia*, paras 22(C)(a)(iii) and 28A.2, and all other parts of DC Am3 which refer to para 28A.2. I shall elaborate on these paragraphs below.

5 These are the grounds of my decisions in RA 146/2018 (and RA 147/2018).

Procedural history

6 On 22 December 2015, the plaintiff filed her statement of claim ("SOC"). On 8 January 2016, the defendant filed her defence and counterclaim ("DC"). On 22 January 2016, the plaintiff filed her reply and defence to counterclaim ("RDC").

7 On 30 September 2016, the defendant filed Summons No 4778 of 2016 ("SUM 4778/2016") for leave to make amendments to DC. On 4 January 2017, the defendant was granted leave to amend DC and to file Defence and Counterclaim (Amendment No 1) ("DC Am1"). [\[note: 5\]](#) The plaintiff was concurrently granted leave to make consequential amendments to RDC if necessary. [\[note: 6\]](#) On 6 January 2017, the defendant filed DC Am1. On 26 January 2017, the plaintiff filed Reply and Defence to Counterclaim (Amendment No 1).

8 On 26 May 2017, the plaintiff was granted leave from the court in Registrar's Appeal No 130 of 2017 ("RA 130/2017") to amend SOC and to file SOC Am1. [\[note: 7\]](#) The defendant was concurrently granted leave to make amendments to DC Am1 arising from SOC Am1. [\[note: 8\]](#) On 2 June 2017, the plaintiff filed SOC Am1. On 29 June 2017, the defendant filed DC Am2. As there were typographical errors, the defendant's counsel attended before the Duty Registrar on 11 July 2017 and the defendant was granted leave, by consent, from the court to amend DC Am2 to correct those errors. She accordingly filed DC Am3 on 12 July 2017. Following which, on 14 July 2017, the plaintiff filed Reply and Defence to Counterclaim (Amendment No 2) ("RDC Am2").

9 On 28 September 2017, the plaintiff filed Summons No 4488 of 2017 ("SUM 4488/2017") to strike out parts of the defendant's pleading in DC Am2, which became DC Am3, on the basis that they did not arise from SOC Am1. On 27 October 2017, Assistant Registrar Yeo Rong Wei Justin ("AR Yeo") allowed some of the amendments in DC Am3, and struck out those which were not consequential to SOC Am1. He made no order as to costs.

10 On 8 November 2017, the plaintiff filed Registrar's Appeal No 328 of 2017 ("RA 328/2017") against that part of AR Yeo's decision which refused to strike out some of the amendments in DC Am3 (see [18] below). One set of these amendments not struck out pertained to paras 22C(a)(i) to 22C(a)(iii) of DC Am3.

SUM 5415/2017

11 Thereafter on 24 November 2017, the defendant filed Summons No 5415 of 2017 ("SUM 5415/2017") for leave to make amendments to DC Am3, pursuant to O 20 r 5(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed), to include the amendments which had been struck out by AR Yeo in SUM 4488/2017 ("the proposed amendments"). One of the proposed amendments pertained to para 8(d) of DC Am3. The defendant made the application in SUM 5415/2017 on the basis that the

proposed amendments were relevant to the matters in the suit and were required to place the real issues before the court even though they were not consequential to SOC Am1.

12 On 20 April 2018, the hearing of SUM 5415/2017 before Assistant Registrar Lee Yuxian Jay ("AR Lee") was adjourned partly because the plaintiff was unwell. The hearing before him continued on 3 May 2018 and 7 May 2018. On 7 May 2018, because the proposed amendment to para 8(d) of DC Am3 was lacking in specificity, AR Lee gave the defendant an opportunity to reframe that proposed amendment for the plaintiff to know the case she had to meet. The matter was adjourned to 11 May 2018.

13 On 11 May 2018, the defendant's counsel tendered to the court a reframed proposed amendment to para 8(d) ("the Disputed Amendment"), in a document titled "Appendix 1". Thereafter, on the same day, AR Lee granted the defendant leave to make the proposed amendments to DC Am3 inclusive of the Disputed Amendment. AR Lee held that the plaintiff had not shown that the proposed amendments would prejudice her in a manner that could not be compensated by costs occasioned by the proposed amendments. AR Lee also found that the proposed amendments were intended to enable the court to decide the issues in dispute between the parties. He also noted that the plaintiff was free to plead any reliance on a time bar defence in respect of matters concerning the Disputed Amendment. [\[note: 9\]](#)

14 AR Lee also made the following orders on costs:

- (a) no order on costs for the adjournment of the first hearing on 20 April 2018;
- (b) the defendant was to pay the plaintiff \$2,500 (inclusive of disbursements) as costs occasioned by the proposed amendments allowed, as the plaintiff would have to review them to see if further amendments had to be made to RDC Am2; and
- (c) the plaintiff was to pay the defendant \$2,000 (inclusive of disbursements) as costs of the application to make the proposed amendments to DC Am3 itself.

15 Further, AR Lee directed the defendant's counsel to file Appendix 1 after the hearing by the same day, which the defendant's counsel did.

Filing of RA 146/2018 and RA 147/2018

16 On 24 May 2018, the plaintiff filed RA 146/2018 to appeal against part of AR Lee's decision. From her notice of appeal ("RA 146/2018 NOA"), this appeal was primarily against:

- (a) the decision to grant the defendant leave to make the Disputed Amendment to DC Am3; and
- (b) the decision on costs occasioned by the proposed amendments allowed (see [14(b)] above).

17 On 25 May 2018, the defendant filed RA 147/2018 to appeal only against AR Lee's decision on costs.

Decision in RA 328/2017

18 On 2 July 2018 and 6 July 2018, I heard RA 328/2017 on AR Yeo's decision not to strike out

some of the amendments in DC Am3 (see [10] above). I found the amendments which were the subject of the appeal to be:

- (a) consequential to SOC Am1 (which included the amendments that pertained to paras 22C(a)(i) to 22C(a)(iii));
- (b) not consequential to SOC Am1; or
- (c) not clear whether consequential or not to SOC Am1.

However, I allowed all the amendments (except for one) because I saw no useful purpose in compelling the defendant to make a fresh application for leave to include those amendments in [18(b)] and [18(c)] above. I ordered the defendant to pay costs in respect of SUM 4488/2017 (see [9] above) and RA 328/2017 to the plaintiff fixed at \$8,000 plus reasonable disbursements to be agreed or fixed by the court.

Hearing of RA 146/2018 and RA 147/2018

19 On 30 July 2018, I heard both RA 146/2018 and RA 147/2018 (see [16]–[17] above).

Summary

20 By way of a summary, the various key applications and appeals that were described above are set out in the following table:

S/No	Date	Event
1	30 September 2016	The defendant filed SUM 4778/2016 for leave to make amendments to DC.
	4 January 2017	The defendant was granted leave to amend DC, and the plaintiff was granted leave to make consequential amendments to RDC if necessary.
2	26 May 2017	The plaintiff was granted leave from the court in RA 130/2017 to amend SOC and to file SOC Am1. The defendant was concurrently granted leave to make amendments to DC Am1 arising from SOC Am1.
	2 June 2017	The plaintiff filed SOC Am1 .
	29 June 2017	The defendant filed DC Am2 .
3	11 July 2017	The defendant’s counsel attended before the Duty Registrar and the defendant was granted leave, by consent, from the court to amend DC Am2 to correct typographical errors.
	12 July 2017	The defendant filed DC Am3 .
4	28 September 2017	The plaintiff filed SUM 4488/2017 to strike out parts of the defendant’s pleading in DC Am2/DC Am3, on the basis that they did not arise from SOC Am1.

	27 October 2017	AR Yeo allowed some of the amendments in DC Am3, and struck out those which were not consequential to SOC Am1.
5	8 November 2017	The plaintiff filed RA 328/2017 against that part of AR Yeo's decision in SUM 4488/2017 which refused to strike out some of the amendments in DC Am3.
6	24 November 2017 20 April 2018, 3 May 2018, 7 May 2018, 11 May 2018	The defendant filed SUM 5415/2017 for leave to make the proposed amendments to DC Am3, <i>ie</i> , to include the amendments which had been struck out by AR Yeo in SUM 4488/2017. AR Lee heard SUM 5415/2017 and granted the defendant leave to make the proposed amendments to DC Am3 inclusive of the Disputed Amendment .
7	24 May 2018	The plaintiff filed RA 146/2018 to appeal against part of AR Lee's decision in SUM 5415/2017.
8	25 May 2018	The defendant filed RA 147/2018 to appeal only against AR Lee's decision on costs in SUM 5415/2017.
9	2 July 2018, 6 July 2018	I heard RA 328/2017 and allowed all the amendments (except for one) (see [18] above). (I found that the amendments that pertained to paras 22C(a)(i) to 22C(a)(iii) of DC Am3 were consequential to SOC Am1.)
10	30 July 2018	I heard both RA 146/2018 and RA 147/2018 .

Parties' arguments

21 Apart from the issue on costs, from RA 146/2018 NOA, the appeal in RA 146/2018 should have been primarily against AR Lee's decision to grant the defendant leave to make the Disputed Amendment to DC Am3 (see [16] above).

22 As mentioned, the original proposed amendment to para 8(d) of DC Am3 had previously been struck out by AR Yeo in SUM 4488/2017 (see [11] above). Thereafter, this original proposed amendment was reframed on 11 May 2018 (*ie*, this became the Disputed Amendment) when AR Lee gave the defendant an opportunity to reframe it (see [12]–[13] above). In view of this procedural history, the Disputed Amendment was the insertion of the underlined portion as follows to para 8(d) of DC Am3: [\[note: 10\]](#)

The Defendant avers that from August 2008 to June 2009, payments were made to the Plaintiff by the Defendant based on the Plaintiff's production report, save where relevant pages from the Defendant's Agent's Statement or letters from the Plaintiff and Defendant to AIA were provided to show deduction by AIA, from income due to the Defendant, of the Defendant's portion of the 20% discounts given by the Plaintiff to her customers. The Plaintiff accepted this method of computation of the monies due to her under the Agreement and the amounts arrived at by the Defendant each of the 5 times the Defendant made payment to the Plaintiff from 10 Dec 2008 to 15 Jun 2009 by encashing the cheques from the Defendant and not raising an issue about the

sums contained in each of the 5 cheques. That was the practice from the beginning as the Defendant's financial and income statements do not specify or verify the amount payable to the Plaintiff as AIA includes in the Defendant's (as DM) financial and income statements the overriding payments (as a lump sum) arising from all the other agents in the Defendant's agency.

23 The plaintiff's main ground of objection to the Disputed Amendment was that the defendant was allegedly adding new factual material that would give rise to a new cause of action which did not arise out of the same facts or substantially the same facts as a cause of action in respect of which relief had already been claimed in the action by the defendant. [\[note: 11\]](#) The plaintiff submitted that the defendant's application for leave to make the Disputed Amendment was made after the relevant period of limitation, and so pursuant to O 20 rr 5(2) and 5(5) of the Rules of Court, the Disputed Amendment could not be allowed.

24 On the other hand, the defendant submitted that the Disputed Amendment was necessary to enable the real issues to be placed before the court, and could be made pursuant to O 20 r 5(1) of the Rules of Court. [\[note: 12\]](#) The defendant argued that the Disputed Amendment served to clarify the existing parts of the pleading on the "Defendant's portion of 20% discount for clients", which had already been pleaded in DC at paras 22 and 22.2 (which were thereafter, DC Am3 at paras 22C(b)(iii) and 22C(b)(v)(2)). [\[note: 13\]](#) The defendant also submitted that the substance of the matters raised in the Disputed Amendment had already been raised in paras 22C(a)(i) to 22C(a)(iii) of DC Am3. [\[note: 14\]](#)

25 At the hearing for RA 146/2018 and RA 147/2018, the defendant's counsel submitted that the Disputed Amendment was not to maintain a counterclaim against the plaintiff. In the light of this, the defendant's counsel said that the defendant agreed to insert the following sentence at the end of para 8(d) of DC Am3:

The allegations in para 8(d) are not to maintain my counterclaim against the Plaintiff.

26 I add that at the hearing, the plaintiff also sought further orders from this court to strike out the following parts of the pleading in DC Am3: [\[note: 15\]](#)

- (a) para 22(C)(a)(iii); and
- (b) para 28A.2 and all parts of the pleading relating to it.

These further orders sought were not part of the appeal in RA 146/2018 NOA.

Decision

27 I will deal first with the further orders that the plaintiff sought from this court to strike out other parts of the pleading in DC Am3 (see [26] above). As mentioned, these matters were not part of the appeal in RA 146/2018 NOA to begin with. This was in itself sufficient basis not to grant these further orders. Nevertheless, because the plaintiff again included these matters in CA 157/2018 NOA as part of her appeal (see [47(b)]–[47(c)] below), I will briefly elaborate on them.

28 SUM 5415/2017, from which the appeal in RA 146/2018 was brought, was the defendant's summons for leave to make the proposed amendments to DC Am3, to include the amendments which had been struck out in SUM 4488/2017. SUM 5415/2017 was not the plaintiff's summons to strike out parts of the pleading in DC Am3.

Paragraph 28A.2 of DC Am3 and all parts of the pleading relating to it

29 I first discuss the plaintiff's request to strike out para 28A.2 of DC Am3 and all parts of the pleading relating to it. This issue did not even arise from SUM 5415/2017, or any summons in this suit to begin with.

30 The plaintiff had never filed any summons previously in this suit to request for para 28A.2 to be struck out. Apart from a change in the paragraph numbering from "28.2" (in DC, DC Am1 and DC Am2) to "28A.2" (in DC Am3), the defendant had made no amendment to the text and figure in para 28A.2 of DC Am3. In SUM 4488/2017 to strike out parts of the defendant's pleading in DC Am2/DC Am3, the plaintiff had only requested to strike out the *amendments to the figures* stated in para 28A of DC Am3 (and the particulars provided at *para 28A.1* of DC Am3). [\[note: 161\]](#) To be clear, the only amendments were to the figures in paras 28A and 28A.1; as mentioned, there was no amendment to para 28A.2. The court granted the plaintiff's request to strike out the amendments to the figures in paras 28A and 28A.1.

31 The defendant then requested in SUM 5415/2017 for leave to make amendments to DC Am3 to include the amendments which had been struck out in SUM 4488/2017. Of relevance here are thus the proposed amendments to the figures in paras 28A and 28A.1. The court granted the defendant leave in SUM 5415/2017 to make these amendments.

32 There was therefore no basis for the plaintiff to request, in RA 146/2018, to strike out entirely para 28A.2 of DC Am3 and all parts of the pleading relating to it.

Paragraph 22(C)(a)(iii) of DC Am3

33 In relation to the plaintiff's request to strike out para 22(C)(a)(iii) of DC Am3, this issue also did not arise from SUM 5415/2017.

34 In SUM 4488/2017 to strike out parts of the defendant's pleading in DC Am2/DC Am3, the plaintiff had requested to strike out the amendments to include paras 22C(a)(i) to 22C(a)(iii) of DC Am3. [\[note: 171\]](#) AR Yeo did not strike out these amendments (and some other amendments in DC Am3). The plaintiff filed RA 328/2017 to appeal against this part of AR Yeo's decision.

35 Paragraphs 22C(a)(i) to 22C(a)(iii) of DC Am3 state as follows:

22C. Paragraph 18C of the Statement of Claim (Amendment No. 1) is denied.

(a) The Defendant avers that she is not liable to the Plaintiff for any sums that were allegedly due before 30 June 2009 by reason of *inter alia* the following matters:

(i) She made payments in the sum of S\$465,943.10 to the Plaintiff for the period 5 August 2008 to 15 June 2009 by way of cheques (the "**Cheques**"). The Cheques were presented to the bank for payment, and comprise:

- (1) 10 December 2008 – S\$271,922;
- (2) 17 February 2009 – S\$8,754.60;
- (3) 9 April 2009 – S\$47,750;

(4) 11 May 2009 – S\$20,788.50; and

(5) 15 June 2009 – S\$116,738.

(ii) Pursuant to agreements between the parties, the amount that the Defendant was entitled to offset under Parts I, II and III of Clause 1 of the Agreement for the period between August 2008 to June 2009 is S\$70,000.

(iii) The Plaintiff has accepted that all sums due before 30 June 2009 had already been paid by the Defendant and no accounts are outstanding for this period. In doing so, the Plaintiff agreed that the Defendant would not be responsible to pay for any discounts given by the Plaintiff to her customers. Accordingly, when AIA deducted a portion of those discounts from the monies paid to the Defendant, the Defendant was entitled to offset the same from the monies payable to the Plaintiff by the Defendant pursuant to the Agreement. During the period from August 2008 to June 2009, the amount deducted by AIA from the Defendant for this reason was S\$125,500.

...

[emphasis in original]

36 I found in RA 328/2017 that the defendant's amendments to include paras 22C(a)(i) to 22C(a)(iii) of DC Am3 were consequential to SOC Am1 (see [18(a)] above). One of the plaintiff's amendments in SOC Am1 was to enlarge her claim in relation to "the loss caused by the Defendant's breaches of Clauses 1 and 3 of the Agreement". [\[note: 18\]](#) (It is not necessary in the grounds of my decision to explain this category of loss claimed.) At the hearing for RA 328/2017, the defendant submitted that the plaintiff was then claiming in SOC Am1, *inter alia*, for amounts allegedly due before July 2009. Since paras 22C(a)(i) to 22C(a)(iii) of DC Am3 pertained to the defendant's claim that "she is not liable to the Plaintiff for any sums that were allegedly due before 30 June 2009", [\[note: 19\]](#) I was of the view that the inclusion of these paragraphs in DC Am3 was consequential to SOC Am1. The plaintiff did not appeal against any aspect of my decision in RA 328/2017.

37 Therefore, I did not grant the further orders that the plaintiff had sought from this court to strike out paras 22(C)(a)(iii) and 28A.2 of DC Am3 and all parts of the pleading relating to para 28A.2.

The Disputed Amendment

38 I now turn to the Disputed Amendment, which has been set out at [22] above. The original proposed amendment to para 8(d) of DC Am3 (before it was reframed to the Disputed Amendment) had not been found to be consequential to SOC Am1 in SUM 4488/2017 (see [9] and [11] above). However, the defendant's basis for filing SUM 5415/2017 for leave to amend para 8(d) was that the original proposed amendment/the Disputed Amendment was relevant to the matters in the suit and was required to place the real issues before the court.

39 The Disputed Amendment related to, *inter alia*:

(a) payments made to the plaintiff by the defendant from August 2008 to June 2009 which did not include "the Defendant's portion of the 20% discounts given by the Plaintiff to her customers"; and

(b) the plaintiff's acceptance of this method of computation for the payments when the

defendant made payment to her by way of five cheques from 10 December 2008 to 15 June 2009.

40 The matters raised in the Disputed Amendment were similar to those already raised in paras 22C(a)(i) to 22C(a)(iii) of DC Am3 (as set out at [35] above). By way of summary, paras 22C(a)(i) to 22C(a)(iii) related to, *inter alia*:

(a) the defendant's non-liability for "any discounts given by the Plaintiff to her customers" during the period from August 2008 to June 2009 (see para 22C(a)(iii)); and

(b) the plaintiff's acceptance of the defendant's payments to the plaintiff by way of five cheques from 10 December 2008 to 15 June 2009 (see paras 22C(a)(i) and 22C(a)(iii)).

41 I was satisfied that the Disputed Amendment served to clarify what was already pleaded in para 8(d). The Disputed Amendment was an insertion of around two sentences into para 8(d) itself, to clarify how the defendant made payments to the plaintiff from August 2008 to June 2009. I make no comment on the defendant's argument that the Disputed Amendment also served to clarify the defendant's pleading on the "Defendant's portion of 20% discount for clients" at paras 22C(b)(iii) and 22C(b)(v)(2) of DC Am3 (see [24] above).

42 For these reasons, the Disputed Amendment did not give rise to a new cause of action. Further, the defendant agreed to insert an additional sentence in DC Am3 to state that the allegations in para 8(d), which included the Disputed Amendment, were not to maintain her counterclaim against the plaintiff (see [25] above).

43 Order 20 rules 5(1), 5(2) and 5(5) of the Rules of Court state:

Amendment of writ or pleading with leave (O. 20, r. 5)

5.—(1) Subject to Order 15, Rules 6, 6A, 7 and 8 and this Rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

(2) Where an application to the Court for leave to make the amendment mentioned in paragraph (3), (4) or (5) is made after any relevant period of limitation current at the date of issue of the writ has expired, the Court may nevertheless grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so.

...

(5) An amendment may be allowed under paragraph (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment.

44 Since the effect of the Disputed Amendment was not to add or substitute a new cause of action, O 20 rr 5(2) and 5(5) did not apply. I affirmed AR Lee's decision to grant the defendant leave to make the Disputed Amendment to DC Am3 pursuant to O 20 r 5(1). I also accepted AR Lee's decision on costs.

45 Therefore, I dismissed RA 146/2018 and ordered the plaintiff to pay costs of this appeal to the

defendant fixed at \$2,500 forthwith inclusive of disbursements. I also dismissed RA 147/2018 and ordered the defendant to pay costs of this appeal to the plaintiff fixed at \$200 forthwith inclusive of disbursements.

CA 157/2018

46 As mentioned, after I dismissed both RA 146/2018 and RA 147/2018 on 30 July 2018, the plaintiff filed CA 157/2018 on 29 August 2018 to the Court of Appeal to appeal against my decision in respect of RA 146/2018, pursuant to para (g) of the Fourth Schedule to the Supreme Court of Judicature Act. I will make some comments on CA 157/2018 NOA.

47 In CA 157/2018 NOA:

(a) paras 1 and 1(a) pertain to the plaintiff's request that the amendment to para 8(d) of DC Am3 (*ie*, the Disputed Amendment) be disallowed;

(b) para 2 pertains to the plaintiff's request that the amendment that included para 22(C)(a) (iii) in DC Am3 be disallowed;

(c) para 3 pertains to the plaintiff's request that para 28A.2 and all other parts of DC Am3 which refer to it be struck out;

(d) para 4 pertains to the plaintiff's request that the amendments in other paragraphs which were the subject of RA 328/2017, SUM 5415/2017 and SUM 4778/2016 be disallowed;

(e) para 5 pertains to the plaintiff's request that the costs orders for RA 146/2018 be set aside; and

(f) para 6 pertains to the plaintiff's request that costs be paid by the defendant to her for, *inter alia*, costs of the application to make the proposed amendments to DC Am3 itself (*ie*, SUM 5415/2017) (see [14(c)] above) and costs occasioned by the proposed amendments allowed (see [14(b)] above).

48 Given the scope of the appeal in RA 146/2018 (see [16] above), paras 1, 1(a) and 5 and part of para 6 (*ie*, costs occasioned by the proposed amendments allowed) of CA 157/2018 NOA pertain to matters that arose from my decision in respect of RA 146/2018. It appears that paras 2, 3 and 4 and the other parts of para 6 of CA 157/2018 NOA pertain to matters outside the scope of RA 146/2018.

49 In relation to paras 1 and 1(a) of CA 157/2018 NOA, there is the question whether the plaintiff may bring an appeal to the Court of Appeal against my decision in RA 146/2018 to grant the defendant leave to make the Disputed Amendment to DC Am3.

50 Section 34(1)(a) of the Supreme Court of Judicature Act states:

Matters that are non-appealable or appealable only with leave

34.—(1) No appeal shall be brought to the Court of Appeal in any of the following cases:

(a) where a Judge makes an order specified in the Fourth Schedule, except in such circumstances as may be specified in that Schedule;

...

Paragraph (g) of the Fourth Schedule to the Supreme Court of Judicature Act states:

ORDERS MADE BY JUDGE

THAT ARE NON-APPEALABLE

No appeal shall be brought to the Court of Appeal in any of the following cases:

...

(g) where a Judge makes an order giving leave to amend a pleading, except if —

(i) the application for such leave is made after the expiry of any relevant period of limitation current at the date of issue of the writ of summons; and

(ii) the amendment is an amendment to correct the name of a party or to alter the capacity in which a party sues, or the effect of the amendment will be to add or substitute a new cause of action;

...

51 The plaintiff filed CA 157/2018 pursuant to para (g) of the Fourth Schedule to the Supreme Court of Judicature Act. However, the Disputed Amendment did not have the effect of adding or substituting a new cause of action (see [42] above). Further, the defendant agreed to insert an additional sentence in DC Am3 to state that the allegations in para 8(d), which included the Disputed Amendment, were not to maintain her counterclaim against the plaintiff. The Disputed Amendment was also not one to correct the name of a party or to alter the capacity in which a party sued. Therefore, pursuant to s 34(1)(a) and para (g) of the Fourth Schedule to the Supreme Court of Judicature Act, it appears that the plaintiff cannot bring an appeal to the Court of Appeal against my decision in RA 146/2018 to grant the defendant leave to make the Disputed Amendment to DC Am3.

52 In relation to paras 2, 3 and 4 and the other parts of para 6 of CA 157/2018 NOA (see [48] above), it appears that the plaintiff cannot bring an appeal on matters that were outside the scope of the appeal in RA 146/2018. Further, in relation to para 2 of CA 157/2018 NOA, the plaintiff did not previously appeal against my decision in RA 328/2017 which allowed the amendment to include para 22(C)(a)(iii) in DC Am3 (see [36] above). In relation to para 3 of CA 157/2018 NOA, the plaintiff had never filed any summons in this suit to strike out para 28A.2 and all other parts of DC Am3 which refer to it (see [29] above). Therefore, it appears that there is no basis for the plaintiff to request that paras 22(C)(a)(iii) and 28A.2 and all other parts of DC Am3 which refer to para 28A.2 be struck out.

53 I will leave the parties to address the appropriate court on whether the plaintiff may appeal to the Court of Appeal in respect of the matters which are the subject of CA 157/2018.

Concluding remarks

54 One of the reasons for the multiple applications and appeals is that DC Am2 (and consequently DC Am3) included amendments which were not consequential to SOC Am1 (see [18] above). The defendant was not granted leave in RA 130/2017 to make such amendments and her solicitors should

have known better than to attempt to slip in those amendments in the first place without agreement from the plaintiff. Notwithstanding this, if the non-consequential amendments would have been allowed if a formal application for leave had been made to include them, then the plaintiff should not have insisted that a formal application be made by the defendant as that would generate unnecessary costs all round. I note that the plaintiff's previous solicitors had attempted to reach an agreement with the defendant's solicitors on the basis that the plaintiff would not object to such amendments if the defendant paid a certain amount as costs to the plaintiff, [\[note: 20\]](#) but the defendant did not agree. [\[note: 21\]](#) Also, the plaintiff claimed that she did not endorse the approach of her previous solicitors. Eventually much more time and costs were unnecessarily incurred.

[\[note: 1\]](#) See Statement of Claim (Amendment No 1) ("SOC Am1") at para 2; Defence and Counterclaim (Amendment No 3) ("DC Am3") at para 3.

[\[note: 2\]](#) See SOC Am1 at para 3A; DC Am3 at para 4A.

[\[note: 3\]](#) See SOC Am1 at paras 4–4A; DC Am3 at para 5.

[\[note: 4\]](#) See SOC Am1 at para 6; DC Am3 at para 7.

[\[note: 5\]](#) See HC/ORC 372/2017 at para 1.

[\[note: 6\]](#) See HC/ORC 372/2017 at para 2.

[\[note: 7\]](#) See HC/ORC 3492/2017 at paras 1, 6.

[\[note: 8\]](#) See HC/ORC 3492/2017 at para 7.

[\[note: 9\]](#) Notes of Arguments for SUM 5415/2017 on 11 May 2018 at p 3 lines 28–30.

[\[note: 10\]](#) See Appendix 2 to HC/ORC 3472/2018 at para 1 read with Plaintiff's Written Submissions for RA 146/2018 and RA 147/2018 ("Plaintiff's Written Submissions") at pp 5–6 para 6.

[\[note: 11\]](#) See Plaintiff's Written Submissions at p 15 para 1(d).

[\[note: 12\]](#) See Defendant's Written Submissions for RA 146/2018 and RA 147/2018 ("Defendant's Written Submissions") at pp 3–4.

[\[note: 13\]](#) See Defendant's Written Submissions at p 5; DC Am3 at para 22C(b)(v)(2).

[\[note: 14\]](#) See Defendant's Written Submissions at p 5.

[\[note: 15\]](#) See Plaintiff's Written Submissions at p 7.

[\[note: 16\]](#) See SUM 4488/2017 at para 1(xix).

[\[note: 17\]](#) SUM 4488/2017 at para 1(x).

[\[note: 18\]](#) See Statement of Claim at para 18; SOC Am1 at para 18C.

[\[note: 19\]](#) DC Am3 at para 22C(a).

[\[note: 20\]](#) See Defendant's affidavit dated 9 October 2017 at pp 37–38.

[\[note: 21\]](#) See Defendant's Written Submissions for RA 328/2017 at para 5(k); Defendant's affidavit dated 9 October 2017 at p 39.

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