Keppel Singmarine Dockyard Pte Ltd v Ng Chan Teng
[2008] SGCA 12

Case Number : CA 118/2007

Decision Date : 13 March 2008

Tribunal/Court : Court of Appeal

Coram : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA

Counsel Name(s) : K Anparasan and Sharon Lin (KhattarWong) for the appellant; N Srinivasan (Hoh Law Corporation) for the respondent

Parties : Keppel Singmarine Dockyard Pte Ltd — Ng Chan Teng

Courts and Jurisdiction – District court – Jurisdiction in actions of contract and tort – Statutory limit for damages – Tortfeasor accepting 70% liability in consent interlocutory judgment – Whether victim could recover 70% of damages assessed capped at statutory limit or only 70% of statutory limit – Section 20 Subordinate Courts Act (Cap 321, 2007 Rev Ed)

Courts and Jurisdiction – High court – Power to transfer proceedings from District Court to High Court – Whether assessment of damages proceedings could be transferred to High Court where interlocutory judgment had been entered in District Court – Section 54B Subordinate Courts Act (Cap 321, 2007 Rev Ed)

Words and Phrases – "Balance of account" – Section 20 Subordinate Courts Act (Cap 321, 2007 Rev Ed)

Words and Phrases – "Otherwise" – Section 20 Subordinate Courts Act (Cap 321, 2007 Rev Ed)

Words and Phrases – "Sufficient reason" – Section 54B Subordinate Courts Act (Cap 321, 2007 Rev Ed)

13 March 2008

V K Rajah JA (delivering the grounds of decision of the court):

1 This is an appeal against the decision of the High Court judge ("the Judge") in *Ng Chan Teng v Keppel Singmarine Dockyard Pte Ltd* [2007] 4 SLR 633 ("the Judgment"), which held that a plaintiff was entitled to recover damages up to a District Court's jurisdictional limit after taking into account any deduction for contributory negligence, if applicable. This means that a District Court may assess damages at a quantum greater than its jurisdictional limit, subject to the qualification that the final amount of damages ordered to be paid is within such limit. We agreed with the Judge's decision and dismissed the appeal. We now give the reasons for our decision.

The facts

2 The respondent in this appeal (who was the plaintiff in the originating suit), Mr Ng Chan Teng ("the respondent"), is a former employee of the appellant (the defendant in the originating suit), Keppel Singmarine Dockyard Pte Ltd ("the appellant"). Sometime in November 2001, the respondent was involved in an industrial accident while working at the appellant's premises. As a result of the accident, the respondent suffered severe injuries to his right arm.

3 The respondent then commenced proceedings in the District Court claiming that the appellant was liable in tort for negligence and/or breach of its statutory duties under the Factories Act

(Cap 104, 1998 Rev Ed) (repealed on 1 March 2006). The reliefs sought were, *inter alia*, general damages and special damages quantified at $22,000.

4 On 7 May 2004, the parties agreed to enter a consent interlocutory judgment, wherein the appellant accepted 70% liability for the accident, with damages to be assessed. Thereafter, the respondent's then solicitors began corresponding with the appellant's solicitors with a view to amicably settling the quantum of damages. In a letter dated 9 November 2005, the respondent's solicitors proposed quantifying the total damages at $923,790. This was not accepted by the appellant and an impasse was reached. On 25 May 2006, the respondent appointed his present solicitors.

5 Despite further exchanges, the parties could not agree on the maximum sum that a District Court could award on the basis of 70% liability. The respondent's position was that the maximum sum ought to be the "District Court limit" as defined in s 2 of the Subordinate Courts Act (Cap 321, 2007 Rev Ed) ("the Act"), *ie*, $250,000. On the other hand, the appellant's position was that the maximum amount that could be awarded was 70% of the District Court limit, *ie*, $175,000. It may be helpful at this juncture to reproduce s 20 of the Act, which reads as follows:

> **Jurisdiction in actions of contract and tort**
>
> **20.**—(1) A District Court shall have jurisdiction to hear and try any action founded on contract or tort where —
>
> (*a*) the debt, demand or damage claimed does not exceed the District Court limit, *whether on balance of account or otherwise*; or
>
> (*b*) there is no claim for money, and the remedy or relief sought in the action is in respect of a subject-matter the value of which does not exceed the District Court limit.
>
> (2) A District Court shall have jurisdiction to hear and try any action where the debt or demand claimed consists of a balance not exceeding the District Court limit after a set-off of any debt or demand claimed or recoverable by the defendant from the plaintiff, being a set-off admitted by the plaintiff in the particulars of his claim or demand.
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> [emphasis added]

As the parties were unable to resolve the issue of whether the respondent could recover up to $250,000 or only up to $175,000 ("the preliminary issue"), the respondent's solicitors referred the matter to the District Court for determination pursuant to O 14 r 12 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the Rules of Court").

6 As an aside, it bears mention that counsel for the respondent clarified that the reason why the above O 14 r 12 application had been filed was that the assessment of damages could no longer be transferred to the High Court in view of the Court of Appeal's decision in *Ricky Charles s/o Gabriel Thanabalan v Chua Boon Yeow* [2003] 1 SLR 511 ("*Ricky Charles*"). In that case, this court held that an assessment of damages could not be transferred to the High Court after interlocutory judgment had been entered in the District Court. Given the practical difficulties that this particular decision has engendered, we have decided to reappraise, in these grounds of decision, whether or not the courts ought to persevere in adhering to it.

The decisions below

7 The matter was first heard by a deputy registrar of the Subordinate Courts ("the Deputy Registrar"). At the hearing, the Deputy Registrar made no order on the respondent's O 14 r 12 application as he was of the opinion that the law was clear and there was therefore no need to make a ruling. The Deputy Registrar was also of the view that the preliminary issue could well be moot as the quantum of damages eventually awarded following an assessment could very well fall below $175,000, thus making any determination of the preliminary issue premature. Further, he thought that the proper forum for the determination of this issue should be the court hearing the assessment of damages itself.

8 The appeal against the Deputy Registrar's decision was heard by a district judge ("the DJ"). The DJ was of the view that a determination under O 14 r 12 of the Rules of Court would be appropriate, given that there was a consensus between the parties to determine the preliminary issue. The DJ then decided that the maximum sum awardable at 70% liability was $175,000. His reasoning, at [7] of his grounds of decision (*Ng Chan Teng v Keppel Singmarine Dockyard Pte Ltd* [2007] SGDC 213), was as follows:

> After careful consideration, I found myself in broad agreement with the submissions of the Defendant [*ie*, the appellant]. Like the Deputy Registrar, I was of the view that the language of Section 20 [of the Act] is plain and obvious, and the answer is clear. As the District Court limit is set at $250,000, 70% of $250,000 must mean that the Plaintiff's [*ie*, the respondent's] claim is now limited to $175,000. In my view, to adopt the Plaintiff's interpretation would lead to uncertainty as to whether such civil claims ought to be commenced in the High Court or [the] District Court. The issue of contributory negligence was something that could not be accurately determined at the outset. Adopting the Plaintiff's interpretation would also mean potentially that claims of up to $25 million could well commence in the District Court assuming that the Court ultimately finds the Defendant to be 1% liable. In my view, this would not be logical.

9 Not satisfied with the DJ's decision, the respondent then filed a further appeal to the High Court. The Judge applied the Northern Irish High Court decision of *Artt v W G & T Greer* [1954] NI 112 ("*Artt*") and allowed the appeal, holding that the maximum sum awardable at 70% liability ought to be the District Court limit of $250,000. His reasoning is aptly summarised in the following extract (see the Judgment ([1] *supra*) at [6]):

> The natural meaning of parties who say that they agree to interlocutory judgment based on 70% liability, with damages to be assessed, must … [be] that the defendant agrees to pay 70% of the damages assessed. That would be the meaning in such a judgment entered in the High Court. It cannot have a different meaning in the District Court. It is more rational and consistent to adopt the same meaning and, after which, look to s 20 of [the Act], read with s 2 of the same, to cap the amount that is eventually ordered.

The parties' contentions

10 The arguments and the authorities relied on by the parties before this court were earlier considered in the court below. The appellant, on the one hand, relied substantially on *Kelly v Stockport Corporation* [1949] 1 All ER 893 ("*Kelly*"), while the respondent, on the other hand, relied on *Artt*.

Whether deduction for contributory negligence to be made from District Court limit or from actual damages assessed

The position in other jurisdictions

11 *Kelly*, an English Court of Appeal decision, *prima facie* favours the appellant's contention that $175,000 is the maximum sum that could be awarded at 70% liability. In that case, the plaintiff and his mother (the co-plaintiff) brought a claim in respect of injuries suffered by the former. The claim contained particulars of special damages and a claim for loss of wages by the plaintiff's mother, and it ended with the words "and the plaintiffs claim £200 in damages". The matter was first heard by the Stockport County Court, which had a jurisdictional limit of £200. The judge held that the defendant was negligent, but apportioned one-third of the blame to the plaintiff. Damages were assessed at £300, and it was this figure which the judge reduced by one-third. The damages awarded to the plaintiffs were thus £200, which was the pecuniary limit of the county court.

12 The county court's decision was unanimously reversed by the English Court of Appeal, which held that the maximum sum recoverable by the plaintiffs was one-third of £200 (*ie*, £133). In particular, Tucker LJ noted that under s 1(2) of the Law Reform (Contributory Negligence) Act 1945 (c 28) (UK), the court must record the total damages which would have been recoverable if the claimant had not been at fault. In this regard, he was of the view that it would be an excess of jurisdiction if the county court were to record a sum that was higher than one it could award.

13 The central premise in *Kelly* was subsequently considered and doubted by the Northern Irish High Court in *Artt* ([9] *supra*). In the latter case, the jury had found the defendant negligent, but had, at the same time, also found the plaintiff guilty of contributory negligence. The county court's jurisdictional limit in Northern Ireland at that time was £100, and the damages assessed by the jury amounted to £150. Notwithstanding *Kelly*, Lord MacDermott LCJ was of the view that any reduction for contributory negligence should be made from the damages assessed and not from the county court limit, and that the plaintiff ought to be entitled to £100. He formed his views on the basis of a reasoned construction of s 2(1) of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948 (c 23) (UK) ("the 1948 UK Act"), which stated that where a claimant suffered damage partly as a result of his own fault and partly as a result of the fault of another, the "damages recoverable" by the claimant "shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage". MacDermott LCJ commented on s 2(1) of the said Act as follows (at 117):

> I am not satisfied that the words "damages recoverable" in [s 2(1)] were intended to mean one thing in one court and a different thing in another court according to the limits of jurisdiction. The expression is not a very happy one because whatever else may be in doubt it is clear that the damages described as "recoverable" are just the damages which the claimant, on the hypothesis of the subsection, cannot and never could recover. *A strictly literal interpretation of this expression must, therefore, be rejected. One must consult the purpose and policy of the section and seek a construction conforming thereto and, at the same time, compatible with the language of the text*. [emphasis added]

14 MacDermott LCJ also took issue with s 2(1)(*b*) of the 1948 UK Act, which provided that where a defendant's liability was limited by any contract or enactment, the amount of damages recoverable must not exceed the maximum sum applicable under such contractual or statutory provision. He said (at 119):

> Again, it appears to me that proviso (*b*) to [s 2(1)] contains a fairly clear indication that the view taken in *Kelly v. Stockport Corporation* was founded on an unduly narrow interpretation of the words "damages recoverable". It may be that this proviso was not intended to embrace enactments limiting the competence of courts, but the reasoning of the Court of Appeal [in *Kelly*] would seem as applicable to cases coming within it as to cases involving the limits of jurisdiction. If the "damages recoverable" have to be measured on occasion by what the court has power to

award, I see no reason why they should not also have to be measured by overriding limits imposed by contract or statute. But if that were so proviso (*b*) would become not only unnecessary but inapt, for in such case the award would almost inevitably be less than the limit and, certainly, could never exceed it. Let me take by way of illustration, the case of a fare paying passenger who is injured partly by the fault of the carrier and partly by his own fault in circumstances which render a limit of liability provided for by the contract of carriage applicable. Proviso (*b*) as I read it, says that the amount recoverable by such a passenger "by virtue of this sub-section" is not to exceed such limit. What, then, happens if the actual damages suffered by the passenger are more than the limit? If the "damages recoverable" are the limit the award can never be more. But if these words point to the actual loss suffered then the award might exceed the limit were it not for proviso (*b*). It seems to me that this proviso contemplates that, before it comes into force, the process of reduction will have operated on the actual loss, and if this is right it is a strong indication that the policy of the subsection is opposed to the contention of the plaintiff.

15 The reasoning of MacDermott LCJ in *Artt* was approved by Cleary J in the Wellington Court of Appeal decision in *C & A Odlin Timber and Hardware Company Limited v Gray* [1961] NZLR 411. In that case, the court had to construe s 3(1) of the Contributory Negligence Act 1947 (NZ) ("the New Zealand Act"), which was *in pari materia* with s 2(1) of the 1948 UK Act. Cleary J stated at 422–423 that:

> Section 3(1) [of the New Zealand Act] provides, in effect, that where there is contributory negligence on the part of a plaintiff "the damages recoverable" shall be reduced to such an extent as the Court thinks just and equitable having regard to the plaintiff's share in the responsibility for the damage. Here, again, the word "recoverable" does not seem susceptible of the meaning "recoverable by judgment", for the deduction for the plaintiff's fault must be made before reaching a sum for which judgment may be entered. This is borne out by the language used in [s 3(2)], which requires the Court to find and determine "the total damages which would have been recoverable if the claimant had not been at fault," and also by the language of [s 3(6)], which, in cases tried with a jury, in like manner requires the jury to determine "the total damages which would have been recoverable if the claimant had not been at fault." I think "the damages recoverable" in [s 3(1)] mean exactly the same as "the total damages that would have been recoverable" required to be found under the two later subsections. I wholly agree with the reasoning of Lord MacDermott in *Artt v. W. G. & T. Greer* [1954] N.I. 112, where he said speaking of the words "damages recoverable" … : "The expression is not a very happy one because whatever else may be in doubt it is clear that the damages described as 'recoverable' are just the damages which the claimant, on the hypothesis of the subsection, cannot and never could recover. A strictly literal interpretation of this expression must, therefore, be rejected. One must consult the purpose and policy of the section and seek a construction conforming thereto and, at the same time, compatible with the language of the text. Now so far as the text is concerned it is, I think, impossible to resist the conclusion that when [s 2(1) of the 1948 UK Act] speaks of 'the damages recoverable' in respect of the damage suffered it means neither more nor less than what [s 2(2) of the 1948 UK Act] calls 'the total damages which would have been recoverable if the … claimant had not been at fault'" (*ibid.*, 117).
>
> The matter for decision in the case before Lord MacDermott related to the bearing of the words "the damages recoverable" on a claim before a Court of limited jurisdiction, which was the same question as was considered by the Court of Appeal in *Kelly* v. *Stockport Corporation* [1949] 1 All E.R. 893. Ultimately Lord MacDermott took a view at variance with the view taken by the Court in *Kelly's* case, but I can see nothing in the judgments in that case which in any way conflicts with the observations I have cited from Lord MacDermott's judgment on the particular point he was

then discussing.

16 Having reviewed some English, Northern Irish and New Zealand jurisprudence, we now turn to consider the Australian position on the issue. In *Nichols v Patrick Stevedoring Co Pty Ltd* [1979] 2 NSWLR 457 ("*Nichols*"), the plaintiff was injured by reason of the defendant's negligence. Pursuant to the Workers' Compensation Act 1926 (NSW) ("the NSW Workers' Compensation Act"), the plaintiff received A$3,313.36 from the defendant. Notwithstanding the compensation paid, the plaintiff commenced proceedings in the Newcastle District Court and claimed damages of A$20,000. The amount claimed was, incidentally, that court's pecuniary limit.

17 The jury found for the plaintiff in the sum of A$30,000. The trial judge then deducted the A$3,313.36 compensation from the A$30,000, thereby reducing the award to A$26,686.64. He then entered judgment for A$20,000. On appeal, the New South Wales Court of Appeal held, by a 2:1 majority, that the reduction should have been made from the A$20,000 limit. The majority's reasoning was that if the A$3,313.36 compensation was not deducted from the A$20,000 statutory limit, it would mean that the plaintiff could have recovered A$23,313.36 in total, which was in excess of the lower court's statutory limit. In their view, that would defeat the legitimate expectations of the defendant. Further, the majority also noted that by virtue of s 76(2)(b) of the District Court Act 1973 (NSW) ("the NSW District Court Act"), any reduction for contributory negligence would operate on the statutory limit of A$20,000, and there was therefore no reason why the same should not be applied to reduction for compensation paid under the NSW Workers' Compensation Act. It would perhaps be helpful at this juncture to reproduce s 76(2)(b) of the NSW District Court Act, which reads as follows:

> Where in an action commenced after the commencement of section 3(k) of the District Court (Amendment) Act 1975 a verdict (whether of the Judge or a jury) is found for, or the total amount which would have been recoverable if the successful party had not been at fault is found at, an amount in excess of the amount for which the action was authorised by this Act to be brought, the Court shall record the amount of the verdict or total amount, as the case may be, and the successful party shall be entitled to recover:
>
> > (a) the maximum amount for which the action was authorised by this Act to be brought; or
> >
> > (b) that amount reduced in accordance with Part 3 of the Law Reform (Miscellaneous Provisions) Act 1965 [which dealt with contributory negligence], as the case may be.

The observations made by the majority in *Nichols* in relation to the above statutory provisions were as follows (at 461):

> This construction is not only consistent with the scheme which s. 76(2) [of the NSW District Court Act] establishes for cases of contributory negligence but is necessarily demanded by it. In such cases, s. 76(2)(b) requires the statutory maximum to be substituted for the "total amount", and permits recovery for the statutory maximum reduced for contributory negligence. Let me take an example. Assume the jury assesses damages at $30,000 (the total amount) and finds 10 per cent contributory negligence. The total amount is reduced to $20,000 (the statutory maximum) and judgment … for $20,000 reduced by 10 per cent equals $18,000.

18 Mahoney JA dissented from the majority on the basis that in the absence of any legislative intervention, any reduction for workers' compensation ought to be made from the damages assessed and not from the pecuniary limit of an inferior court. He argued persuasively at 465:

> In the case of contributory negligence, s. 76(2) [of the NSW District Court Act] makes a special provision. The effect is, it is submitted, that, if the amount which the plaintiff could have recovered, had he not been guilty of contributory negligence, is more than $20,000, then the amount of the reduction to be made pursuant to s. 10(1) is to be applied, not against the amount that he otherwise would have recovered, but against $20,000: see s. 76(2)(b). But the provision in s. 76(2)(b) is one which relates to the case where the successful party has "been at fault"; it is not extended to a case involving s. 63(5) of the [NSW] Workers' Compensation Act. The effect of the defendant's argument would be to apply to the latter case the principle which has been expressly applied to the former, even though the subsection does not so apply it.

19 It would appear from the above passage that Mahoney JA was of the view that the *default position at law* ought to be that any reduction for contributory negligence should be made from the actual amount of damages assessed, and not from the statutory limit on the amount of damages awardable. It was only where Parliament had expressed otherwise (*eg*, by way of s 76(2) of the NSW District Court Act) that reduction would be made from the statutory limit.

The position in Singapore

20 The question before this court is a straightforward one: Should a plaintiff's share of contributory negligence be reduced from the actual damages assessed upon an assessment of damages or from the District Court limit? Having considered the issue carefully, we are of the view that any reduction for contributory negligence ought to be made from the actual damages assessed and not from the District Court limit.

21 The phrase "the … damage claimed does not exceed the District Court limit" in s 20(1)(*a*) of the Act must plainly mean what it says. The English Court of Appeal in *Kelly* ([10] *supr*a), in coming to its conclusion, did not consider or rationalise earlier decisions such as *Pascall Ltd v Escott Ltd* [1926] 2 WWR 21 ("*Pascall")* and *Woodhams v Newman* (1849) 7 CB 654, which rightly emphasised that the verdict sought by the claimant was the criterion of the amount of the claim. In our view, the "damage claimed" in s 20(1)(*a*) of the Act is the verdict sought, and it is clear beyond peradventure that the quantum of the "damage claimed" is distinct from the quantum of the damages eventually assessed (see, for instance, *Kelly*, where the claim was for £200 but damages were assessed at £300). It appears that the English Court of Appeal in *Kelly* had mistakenly conflated the amount to be awarded on an assessment of damages with the final verdict sought by the plaintiff.

22 Section 20(1)(*a*) of the Act, when read with the definition of "District Court limit" in s 2, stipulates that a District Court has jurisdiction over a contractual or tortious matter if the debt, demand or damage claimed does not exceed $250,000. It should, however, be noted that the pecuniary limit of $250,000 is, in the very same subsection (*ie*, s 20(1)(*a*)), qualified by the phrase "*whether on balance of account or otherwise*" [emphasis added]. In this regard, it has been long established that the jurisdiction of a court to try claims which are within its pecuniary limit "on balance of account" exists irrespective of the amount of the original claim (see *Pascall* at [43]). The reasoning behind this was explained by Maule J in *Woodhams v Newman*, where he stated at 667:

> Suppose a claim to be preferred in the county-court for a sum below 20l., and it appears that the debt originally exceeded 20l., but has been reduced by payment or otherwise before action brought, the defendant shall not be entitled to say that the case is without the jurisdiction of the county-court, because the debt originally exceeded 20l. *The verdict is the criterion of the amount of the claim* ... [emphasis added]

23 It is also evident from s 20(2) of the Act that in proceedings where the defendant has a right

of set-off against the plaintiff, a claim exceeding the pecuniary limit of $250,000 may proceed in the District Court, provided that the set-off is admitted and the balance of the claim *after* the set-off is $250,000 or below. In the event that the plaintiff prevails in his claim, the amount after the set-off, so long as it is within the District Court limit, would be awarded to him.

24 It is therefore clear that in contractual proceedings involving a balance of account or an admitted set-off, s 20 of the Act would permit a plaintiff to claim a sum greater than the District Court limit, and any reduction for the balance of account or the set-off would be made from the sum eventually awarded and not from the District Court limit. That being the case, should a plaintiff's share of contributory negligence then be reduced from the damages actually assessed, or from the District Court limit?

25 There does not appear to be any recent judicial decision interpreting the extent or scope of the term "*or otherwise*" in the context of s 20(1)(*a*) of the Act. Nonetheless, we note, at the outset, that the word "otherwise" is clearly capable of having a broad meaning. In *The Oxford English Dictionary* (J A Simpson & E S C Weiner eds) (Clarendon Press, 2nd Ed, 1989) at vol X, p 984, the word "otherwise" is defined as "[i]n another way, or in other ways; in a different manner, or by other means; differently". This is a broad definition importing an open-ended number of alternatives. Further, we note that in *National Association of Local Government Officers v Bolton Corporation* [1943] AC 166, the House of Lords was of the view (at 177) that, in the context of the phrase "whether the contract be by way of manual labour, clerical work or otherwise", the term "or otherwise" meant "or in another way".

26 In our view, the disposal of this appeal rests on whether the term "or otherwise" in s 20(1)(*a*) of the Act should be interpreted *ejusdem generis* or be given its natural meaning. In this regard, according to F A R Bennion, *Statutory Interpretation: A Code* (Butterworths, 4th Ed, 2002) ("*Bennion*") at p 1057, a class or *genus* must first be identified before the *ejusdem generis* principle can apply. If a *genus* cannot be identified, the principle will not apply. It is also noted (*id* at p 1060) that although the *ejusdem generis* principle may apply where only one term purports to establish the *genus*, the presumption in such cases favouring the principle would be weak because of the difficulty in discerning a *genus* from a single term.

27 Reverting to the legislative history of the term "whether on balance of account or otherwise", it bears mention that it was expressly provided, pursuant to s 58 of the County Courts Act 1846 (c 95) (UK) ("the 1846 UK Act") that "all Pleas of Personal Actions, where the Debt or Damage claimed is not more than Twenty Pounds, whether on Balance of Account or otherwise, may be holden in the County Court". In *Woodhams v Newman* ([21] *supra*), it was held that the words "on [b]alance of [a]ccount or otherwise" in s 58 of the 1846 UK Act referred to a debt reduced by payment or by a balance settled and ascertained *before* an action was brought, and did not include a situation where the debt or damage claimed was reduced by a claim of set-off. This conclusion was reached notwithstanding the fact that the defendant's claim to a set-off in *Woodhams v Newman*, with the exception of one item, was not disputed. Subsequently, in *Turner v Berry*, (1850) 20 LJ Ex 89, the court clarified that the phrase "on [b]alance of [a]ccount or otherwise" in s 58 of the 1846 UK Act would include a payment *on account*. Before moving on, it would perhaps be apt to note at this juncture that a restrictive reading of "on balance of account or otherwise", such as that adopted in *Woodhams v Newman*, has since been legislatively tempered by s 20(2) of the Act, which permits an admitted set-off to be taken into account for the purposes of determining jurisdiction.

28 The natural meaning of the term "balance … [of] an account", as provided in *The Oxford English Dictionary* ([25] *supra*) at vol I, p 895, is "[t]o add up the debit and credit sides of an account or set of accounts, and ascertain the difference, if any, between their respective amounts".

In our view, such a term is inherently a broad one, and a *genus* cannot be discerned from it with any certainty. If Parliament had intended to constrict the interpretation of the words "on balance of account" in s 20(1)(*a*) of the Act, it could have adopted language similar to that in s 26 of the County Courts Act 1856 (c 108) (UK), which gave a county court jurisdiction "where such Claim, though it originally exceeded Fifty Pounds, is reduced by Payment into Court, Payment, an admitted Set-Off, or otherwise". In any event, the use of such broad terms by the Legislature is not uncommon. As noted in *Bennion* ([26] *supra*) at p 1001:

> Use of a broad term has the effect of delegating legislative power to the courts and officials who are called upon to apply the enactment. The governing legal maxim is *generalia verba sunt generaliter intelligenda* (general words are to be understood generally). It is not to be supposed that the drafter could have had in mind every possible combination of circumstances which may chance to fall within the literal meaning of general words.

29 While we are keenly aware that the term "whether on balance of account or otherwise" in s 20(1)(*a*) of the Act has its origins from the 1846 UK Act and harks back to a time when contributory negligence was a complete defence to an action in tort, we see no cogent reasons why the same approach, policy and principle applicable to the balancing of accounts and admitted set-offs ought not be applied to instances where a plaintiff is contributory negligent. This is especially so since s 20(1) of the Act is expressly worded to cover both actions in contract and actions in tort. In our view, to limit s 20(1)(*a*) to only matters involving contract would be unduly restrictive. In the circumstances, we are of the opinion that the words "*or otherwise*" in s 20(1)(*a*) of the Act are wide enough to include a situation where reduction of the damages awarded is to be made as a result of a plaintiff's contributory negligence, and that any such reduction should operate on the damages actually assessed and not on the District Court limit.

30 To allow such reduction to be made from the assessed sum instead of from the District Court limit would also be consonant with s 3(3) of the Contributory Negligence and Personal Injuries Act (Cap 54, 2002 Rev Ed), which provides:

> Where any contract or written law providing for the limitation of liability is applicable to the claim, the amount of damages recoverable by the claimant under subsection (1) shall not exceed the maximum limit so applicable.

It is apparent from the above subsection that if a defendant's liability is limited by contract or written law, any reduction for contributory negligence would operate on the total assessed damages and not on the limits imposed by contract or statute. We respectfully agree with the compelling view of MacDermott LCJ in *Artt* ([9] *supra*) emphasising reliance on the purpose and policy of an identical provision (*viz*, s 2(1)(*b*) of the 1948 UK Act): see the passages quoted at [13]–[14] above. That being the case, we do not see why the courts ought to take a diametrically opposite (and illogical) approach by making reductions for contributory negligence from the District Court limit if the defendant's liability is limited by the court's jurisdictional limit under the Act. Instead, the requisite reduction should be made from the damages actually assessed regardless of whether the defendant's liability is limited by the jurisdictional limit of the court, by contract or by statute.

Whether transfer of proceedings to High Court permissible after entry of interlocutory judgment in District Court

31 As noted earlier (at [6] above), counsel for the respondent informed us that the O 14 r 12 application in respect of the preliminary issue had been filed because of the parties' common belief that the action could no longer be transferred to the High Court since interlocutory judgment had

already been entered in the District Court. This point was made explicit in *Ricky Charles* ([6] *supra*), where this court stated that although s 38 of the Subordinate Courts Act (Cap 321, 1999 Rev Ed) ("the 1999 Act"), which was the then equivalent of s 54B of the Act, gave the High Court the discretion to transfer from the District Court to the High Court an entire action encompassing both the question of liability and that of quantum, it was not within the spirit of the said section to permit a transfer of a case to the High Court after consent interlocutory judgment had been obtained in the District Court. The rationale for the decision appeared to be twofold. First, by obtaining an interlocutory judgment in the District Court, the plaintiff was taken to have affirmed his claim to be within the jurisdiction of that court. Second, the defendant might be prejudiced by the assessment of damages taking place in the High Court since he had earlier consented to interlocutory judgment being entered on the basis that the claim would be circumscribed by the jurisdictional limit of the District Court (see also the High Court decision of *Ricky Charles s/o Gabriel Thanabalan v Chua Boon Yeow* [2002] 3 SLR 307 at [24]).

32 In our view, the specific holding in *Ricky Charles* that an action commenced in the District Court may not be transferred to the High Court where interlocutory judgment has already been entered in the former court should not be followed as it proceeded on the wrong assumptions. First, the "affirmation of jurisdiction" approach taken by the Court of Appeal in that case (at [16]) plainly extends only to the limit of the claim *then* being sought, which limit is premised purely on an existing expectation *at that point in time* by the plaintiff's counsel as to the quantum potentially recoverable. The entering of an interlocutory judgment is not a legal affirmation of a lower court's jurisdiction over the plaintiff's claim for the *entire duration* of the proceedings, in the course of which the plaintiff may amend his claim *vis-à-vis*, *inter alia*, the quantum claimed. With due respect, the decision in *Ricky Charles* places far too much emphasis on decisions made at a particular point in time in the proceedings – and often at an early stage – by the plaintiff's counsel. The "affirmation of jurisdiction" approach fails to adequately acknowledge that litigation is a dynamic process in which the parties' claims (and/or defences) are constantly monitored and fine-tuned by counsel. Why should a decision as to the amount of a plaintiff's claim made at a specific juncture in an action be treated as irrevocable if, indeed, there is subsequently a change in circumstances that constitutes a "sufficient reason" justifying a transfer of the proceedings to the High Court? Secondly, a defendant cannot complain of being prejudiced if the law indeed permits the plaintiff to have his claim assessed to its full extent in the proper court. If a genuine mistake has been made by the plaintiff as to the quantum of his claim or if there has been a material change in circumstances after the action is commenced (see, in this regard, [37] below), surely, it is only right that a transfer of the proceedings from the District Court to the High Court be permitted in appropriate cases so that the plaintiff receives the full amount which he is legitimately entitled to. Further, we see, in principle, no difference between a transfer of proceedings before interlocutory judgment has been entered and after such judgment has been entered. The pre- and post-interlocutory judgment phases in an action are discrete and distinct. Of course, if, on the other hand, liability has actually been settled on the basis of an *express* agreement that the matter is to be tried and dealt with in its entirety in the District Court, the position might be quite different. In such a case, an application for a transfer should not be acceded to because of the express agreement between the parties.

33 We also note that subsequent to the decision in *Ricky Charles* ([6] *supra*), several statutory amendments in relation to the jurisdiction to transfer proceedings between courts were effected. According to the Senior Minister of State for Law, Assoc Prof Ho Peng Kee ("the Senior Minister of State"), in his speech at the second reading of the Subordinate Courts (Amendment) Bill 2005 (Bill 16 of 2005) ("the Second Reading speech"), the object of the amendments was "to give the courts greater flexibility to allow transfers in appropriate cases" (see *Singapore Parliamentary Debates, Official Report* (15 August 2005) vol 80 ("*Singapore Parliamentary Debates*") at col 1238). These amendments were largely made pursuant to a report by the Law Reform Committee ("the

Committee"), Singapore Academy of Law, *Transfers of Civil Proceedings between Courts* (May 2004) ("the Report"). The Senior Minister of State also stated (*Singapore Parliamentary Debates* at col 1242) that the principle and policy underpinning the amendments was to ensure that substantive justice would be done, and that litigants would not be deprived of what was rightfully their due merely as a result of procedural rules on jurisdiction:

> [T]hese amendments will rationalise the law relating to transfer of civil cases between different courts and ensure that litigants are not denied access to justice because of procedural rules on jurisdiction. They will enable the courts to dispense substantive justice without being fettered by procedural hurdles and this, in turn, will lead to more efficient use of judicial resources.

34 Although *Ricky Charles* was not dealt with substantively in the Report, we note that the Committee was of the opinion (at p 6) that it was one of five cases which "highlighted certain shortcomings in the prevailing transfer regime". We are satisfied that, as a matter of policy, the specific holding in *Ricky Charles* as set out at [32] above need no longer be observed if a sufficient reason for transferring an action from the District Court to the High Court can be shown and where there is indeed no irretrievable prejudice caused to the defendant by a transfer of the proceedings even though interlocutory judgment has already been entered in the District Court.

35 As to what constitutes "sufficient reason" for a transfer of proceedings in the context of s 54B(1) of the Act (the current equivalent of s 38 of the 1999 Act), we acknowledge that, in some common law jurisdictions, it has been expressly enacted that the fact that the amount to be awarded to the claimant is likely to exceed the jurisdictional limit of the inferior court would be a proper ground for a transfer. For instance, s 140(3)(b) of the Civil Procedure Act 2005 (NSW) provides:

> Proceedings in the District Court on a claim for damages arising from personal injury or death are not to be transferred to the Supreme Court under this section unless the Supreme Court is satisfied:
>
> …
>
> (b) in any other case [apart from a motor accident claim or a workplace injury damages claim]:
>
> (i) that the amount to be awarded to the plaintiff, if successful, is likely to exceed the jurisdictional limit of the District Court, or
>
> (ii) that there is other sufficient reason for hearing the proceedings in the Supreme Court.

36 In this regard, we also note that the position in England prior to 1981 was that a plaintiff had the right to transfer an action from a county court to the High Court *at any time* to increase the amount potentially recoverable. In that regard, s 43(1) of the County Courts Act 1959 (c 22) (UK) provided that:

> **43.**—(1) Where there is commenced in the county court an action founded on contract or tort wherein the plaintiff claims damages, the plaintiff may at any time apply to the Judge for an order to transfer the action to the High Court, on the ground that there is reasonable ground for supposing the amount recoverable in respect of his claim to be in excess of the amount recoverable in the action in the county court.

37 In the local context, the words "sufficient reason" in s 54B(1) of the Act have been held to cast a broad net: see *Cheong Ghim Fah v Murugian s/o Rangasamy (No 2)* [2004] 3 SLR 193 at [10]. It also bears emphasis that the Senior Minister of State made express reference in the Second Reading speech to several examples where a transfer to the High Court might be appropriate, namely (see *Singapore Parliamentary Debates* ([33] *supra*)):

> First, the plaintiff's injuries, especially in personal injury cases, may have worsened or are of a continuing nature such that if he is to revise his claim after he has already filed his claim in a lower court and, before the case is heard, he may need to transfer his case to a court with higher jurisdiction in order to receive an award that the lower court has no power to award; second, the allowable damages might have been raised by court decisions that dealt with similar cases, after the filing of the action in a lower court; third, the amount [counterclaimed] by the defendant might be higher than what the lower court in which the plaintiff who commenced the action can give; or, fourth, the plaintiff might have inadvertently filed his claim in the wrong court.

38 In a similar vein, this court in *Ricky Charles* ([6] *supra*) opined at [15] that the *possibility* of the plaintiff's damages exceeding the jurisdictional limit of the District Court would ordinarily be regarded as a "sufficient reason" for a transfer of proceedings under s 38 of the 1999 Act. As this view is in line with the practice in other common law jurisdictions and is moreover consistent with what was stated in Parliament when the Subordinate Courts (Amendment) Bill 2005 was introduced (see [33] and [37] above), we could not agree more.

39 To conclude, we are of the view that even if a plaintiff mistakenly enters a consent interlocutory judgment in the wrong court (*ie*, in the District Court instead of in the High Court), there is no reason why the assessment of damages cannot thereafter be transferred to the High Court if no real prejudice would be caused to the defendant. In our opinion, the position in respect of the transfer of proceedings ought to be symmetrical both before and after interlocutory judgment has been entered. We would further add that the "prejudice" to the defendant from a transfer of proceedings from a District Court to the High Court cannot possibly consist of the fact that the damages awarded would exceed $250,000 if the transfer were allowed. In our view, some form of irreversible change of position or deviation from a prior express agreement on damages must be shown in order to demonstrate that the transfer of proceedings would cause the defendant real prejudice that cannot be compensated by costs. On this note, it would perhaps be appropriate for us to refer to the following oft-cited observation by Bowen LJ in *Cropper v Smith* (1884) LR 26 Ch D 700 at 710:

> I think it is a well established principle that the object of Courts is to decide the rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights. … I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the Court ought not to correct, if it can be done without injustice to the other party.

40 We in turn reiterate the observations that we made in *Lee Chee Wei v Tan Hor Peow Victor* [2007] 3 SLR 537, in relation to the above quotation, at [82]:

> 82 We are fully in agreement with Bowen LJ. The rules of court practice and procedure exist to provide a convenient framework to facilitate dispute resolution and to serve the ultimate and overriding objective of justice. Such an objective must never be eclipsed by blind or pretended fealty to rules of procedure. On the other hand, a pragmatic approach governed by justice as its overarching aim should not be viewed as a charter to ignore procedural requirements. In the ultimate analysis, each case involving procedural lapses or mishaps must be

assessed in its proper factual matrix and calibrated by reference to the paramount rationale of dispensing even handed justice.

Conclusion

41 For the reasons set out in [20]–[30] above, we dismissed the appellant's appeal with costs here and below.