GLOBAL DESTAR (M) SDN BHD

v.

KUALA LUMPUR GLASS MANUFACTURERS CO SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL MALIK ISHAK J
[CIVIL SUIT NO: D4-22-2224-2000]
10 NOVEMBER 2003

CIVIL PROCEDURE: *Pleadings - Admission of facts in defence - Effects of admission - Whether there was necessity to proceed to trial - Rules of the High Court 1980, O. 27 r. 3*

This was the defendant's appeal by way of encl. 33 against the order of the learned senior assistant registrar entering judgment against the defendant pursuant to O. 27 r. 3 of the Rules of the High Court 1980 ('RHC') for the sum of RM151,361.98 after hearing encl. 21 on its merits. The plaintiff's application in encl. 21 was for judgment to be entered against the defendant under O. 27 r. 3 of the RHC for the above-mentioned amount which was admitted by the defendant in its defence in respect of goods sold and invoiced to the defendant, but not fully paid for. Thus, the only issue requiring determination was whether or not encl. 33 should be allowed.

Held:

[1] On the facts, the defendant had specifically pleaded that it did not deny paras. 4(b) and 5(A)(b) of the statement of claim in that the sum of RM151,361.98 was owing to the plaintiff. It was a clear admission on the part of the defendant. Since it was a cardinal principle of law that every allegation of fact in a statement of claim in a counterclaim must be traversed specifically for otherwise it is deemed to be admitted, the effect of the defendant admitting the facts as pleaded in the plaintiff's statement of claim was that there was no issue between the parties on that aspect of the case, and there was no necessity to proceed to trial. An application under O. 27 r. 3 of the RHC can be made "without waiting for the determination of any other question between the parties". In the context of the present appeal, the defendant had clearly admitted to the plaintiff's claim; hence, there was no point in delaying the matter and a speedy judgment should be given to the plaintiff. (pp 172 d-h & 174 d)

[Enclosure 33 dismissed.]

Case(s) referred to:

Aseam Credit Sdn Bhd v. Eminent Avenue Sdn Bhd [2002] 7 CLJ 465 HC ***(refd)***

Ash v. Hutchinson & Co (Publishers) [1936] Ch 489 ***(refd)***

Ban Hin Lee Bank Bhd v. Long Hua Corp Sdn Bhd & Ors [2000] 6 CLJ 1 HC ***(refd)***

Barnard v. Wieland [1882] 30 WR 947 ***(refd)***

Brown v. Pearson [1882] 21 Ch D 716 ***(refd)***

Caroli v. Hirst [1883] 31 WR 839 ***(refd)***

Eastool Industries Sdn Bhd v. Getfirms Electronics (M) Sdn Bhd [2001] 6 CLJ 151 HC ***(refd)***

Ellis v. Allen [1914] 1 Ch 904 ***(refd)***

Esso Malaysia Bhd v. Hills Agency (M) Sdn Bhd & Ors [1994] 1 MLJ 740 HC ***(refd)***

Gillott v. Ker [1876] 24 WR 428 ***(refd)***

Huo Heng Oil Co (EM) Sdn Bhd v. Tang Tiew Yong [1987] 1 MLJ 139 ***(refd)***

Mackellar v. Hornsey [1901] 49 WR 301 ***(refd)***

Pembinaan V-Jaya Sdn Bhd v. Binawisma Development Sdn Bhd [1987] 2 CLJ 446; [1987] CLJ (Rep) 823 HC ***(refd)***

Pioneer Plastic Containers Ltd v. Commissioner of Customs and Excise [1967] Ch 597 ***(refd)***

Ruby Investment (Pte) Ltd v. Candipark Pte Ltd [1989] 3 MLJ 396 HC ***(refd)***

Rutter v. Tregent [1879] 12 Ch D 758 ***(refd)***

Smith v. Davies [1884] 28 Ch D 650 ***(refd)***

Technistudy v. Kelland [1976] 1 WLR 1042 ***(refd)***

Thorp v. Holdsworth [1876] 3 Ch D 637 ***(refd)***

Legislation referred to:

Rules of the High Court 1980, O. 18 r. 13(1), (2), O. 27 r. 3

For the plaintiff - Justin Voon Tiam Yu (Edward Kok Yoong Khan); M/s Cheah Teh & Su

For the defendant - Maniam Kuppusamy; M/s Skrine

Reported by Suresh Nathan

JUDGMENT

Abdul Malik Ishak J:

To The Heart Of The Matter

This is the defendant's appeal by way of encl. 33 against the order of the learned senior assistant registrar ("SAR") dated 4 April 2003 wherein the learned SAR, *inter alia*, entered judgment against the defendant pursuant to O. 27 r. 3 of the Rules of the High Court 1980 ("RHC") for the sum of RM151,361.98 after hearing encl. 21 on the merits. The plaintiff's application

in encl. 21 is for judgment to be entered against the defendant under O. 27 r. 3 of the RHC on the amount of RM151,361.98 which was admitted by the defendant in their defence in respect of goods sold and invoiced to the defendant but not fully paid for. Order 27 r. 3 of the RHC states as follows:

> Judgment on admission of facts.
> (O. 27, r. 3).
>
> 3. Where admissions of fact are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the Court for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties, and the Court may give such judgment, or make such order, on the application as it thinks just. An application for an order under this rule may be made by summons.

And such admissions of fact may either be express or implied and they must also be clear and explicit (*Ellis v. Allen* [1914] 1 Ch. 904 at p. 909; *Ash v. Hutchinson & Co. (Publishers)* [1936] Ch. 489 at p. 503; *Technistudy v. Kelland* [1976] 1 WLR 1042, [1976] 3 All ER 632, CA; *Barnard v. Wieland* [1882] 30 WR 947; and *Smith v. Davies* [1884] 28 Ch. D 650). Such admissions too may be made expressly:

(i) in a defence; or

(ii) in a defence to a counterclaim; or

(iii) they may be admissions in a situation where the defendant fails to traverse an allegation of fact in the statement of claim; or

(iv) there is a default of defence; or

(v) where the defence is struck out and so the allegations of fact in the statement of claim are deemed to be admitted.

The following authorities must be referred to as they are certainly of great utility in construing O. 27 r. 3 of the RHC:

(a) *Gillott v. Ker* [1876] 24 WR 428;

(b) *Caroli v. Hirst* [1883] 31 WR 839; and

(c) *Mackellar v. Hornsey* [1901] 49 WR 301.

Now, it must be emphasised that the grounds for the plaintiff's application are stated in Yip Wan Kai's affidavit in support that was affirmed on 14 March 2002 as seen in encl. 22. Unfortunately, the defendant did not file any affidavit in reply at all.

Another pertinent point to note would be this. That para. 4(b) of the statement of claim sets out the liability of the defendant for the sum of RM151,361.98 in the following fashion:

> 4. The Defendant had breached and/or repudiated the said Agreement as follows:
>
> (b) Apart from the above, the Defendant had improperly and wrongfully without the consent of the Plaintiff deducted a sum of RM151,361.98 from the amount due for Invoice KLG 99-6 dated 30.6.1999 on the alleged basis that the purity of the Soda Ash supplied for June 1999 was below 99.2% Na2Co3.
>
> The deduction was improper and invalid because:
>
> (i) The Certificate Of Analysis Report prepared by SGS Laboratory Services (M) Sdn Bhd (hereinafter referred to as 'SGS') dated 6.5.1999 and rendered to the Defendant *vide* a letter from the Plaintiff dated 8.6.1999 confirmed that the purity of the Soda Ash supplied was above 99.2%; and
>
> (ii) The Defendant is also estopped from denying the Certificate Of Analysis Report by SGS because the Defendant failed to give any notice in writing to the Plaintiff in accordance with Clause 10 of the said Agreement no later than 7 days from the delivery of the Soda Ash and to tender a report within 1 month thereafter.

And by way of para. 4 of the statement of defence, the defendant categorically states:

> 4. Paragraph 4(b) of the Statement of Claim is not denied.

In plain English, by way of para. 4 of the statement of defence, the defendant has admitted to the plaintiff's claim for the amount in arrears to the tune of RM151,361.98 under Invoice No: KLG 99-6.

Yet another pertinent point to note and emphasise would be this. It is here that I have to narrate the brief background to the appeal at hand. It is only fair and proper that I should state the following factual matrix:

(a) The defendant has attempted to amend para. 4 of the defence to withdraw the admission of liability by way of a summons in chambers dated 27 March 2001 as seen in encl. 9. The attempt was successful when the learned SAR allowed the application in encl. 9 on 26 June 2001 but the plaintiff filed an appeal to the judge in chambers wherein the learned judge of the High Court allowed the appeal and, consequently, dismissed the amendment to para. 4 on 19 February 2002. This meant that para. 4 of the statement of defence remained intact.

(b) The defendant did not appeal to the Court of Appeal against the decision of the learned judge dated 19 February 2002. This also meant that para. 4 of the statement of defence remained intact.

Interestingly, the defendant also admitted to the plaintiff's claim of RM151,361.98 not only in para. 4 of the statement of defence but also in para. 8 of the statement of defence. Now, that para. 8 of the statement of defence is worded in this way:

> 8. Paragraph 5 of the statement of claim and the particulars alleged therein (save for the particulars in paragraph 5 (A) (b)) are denied.

Now, para. 5(A)(b) of the statement of claim states as follows:

> 5. Due to the repudiation and breaches of contract by the Defendant as stated in the paragraph 4 above, the Plaintiff has suffered the following damages and losses:
>
> (a) **Special Damages**
>
> (b) **Sum improperly deducted by the Defendant in breach of contract in payment of the Plaintiff's Invoice No. KLG 99-6 dated 30/6/1999 already rendered to the Defendant**

Amount due pursuant to (the) said Invoice	
No. KLG 99-6 (due on 15/8/1999)	RM498,051.96
Part payment from the Defendant on 6/10/1999	RM346,689.98
Amount still due and owing from the Defendant to the Plaintiff since 15/8/1999	RM151,361.98

Evidently, the defendant has admitted to the plaintiff's claim of RM151,361.98 in paras. 4 and 8 of the statement of defence and this is the damning feature of the present appeal.

It is now trite law that allegations which are not denied and made in the pleadings are deemed admitted. Order 18 r. 13(1) of the RHC states as follows:

> Admissions and denials.
> (O. 18, r. 13).
>
> 13.(1) Subject to paragraph (4), any allegation of fact made by a party in his pleading is deemed to be admitted by the opposite party unless it is traversed by that party in his pleading or a joinder of issue under rule 14 operates as a denial of it.

While O. 18 r. 13(2) of the RHC is worded in this way:

> (2) A traverse may be made either by a denial or by a statement of non-admission and either expressly or by necessary implication.

And I have this to say. That the cardinal principle of law stipulates that every allegation of fact in a statement of claim or in a counterclaim must be traversed specifically for otherwise it is deemed to be admitted. It is obvious that the main object of O. 18 r. 13(1) and r. 13(2) of the RHC is to bring the parties by their pleadings to the specific and definite issues at hand in order to reduce or diminish expense and delay. It is also meant to reduce the number of witnesses to be called (*Thorp v. Holdsworth* [1876] 3 Ch. D 637). Invariably it requires each party to fully admit or categorically deny every material allegation made against him. That being the case, in an action for a debt or liquidated demand in money, a mere denial by the defendant of the debt is wholly insufficient while any admission to a debt would be detrimental. If sufficient admissions are made by the defendant then the plaintiff is entitled to apply for judgment under O. 27 r. 3 of the RHC notwithstanding the fact that the plaintiff has joined issue on the defence and has set the action down for trial (*Rutter v. Tregent* [1879] 12 Ch. D 758; *Brown v. Pearson* [1882] 21 Ch. D 716; and *Smith v. Davies* [1884] 28 Ch. D 650). As I see it, the effect of the defendant admitting the facts as pleaded in the statement of claim is this: that there is no issue between the parties on that part of the case and there is no necessity to proceed to trial. And no evidence is admissible in regard to those admitted facts (*Pioneer Plastic Containers Ltd. v. Commissioner of Customs and Excise* [1967] Ch. 597).

It is my judgment that the defendant has specifically pleaded that they do not deny paras. 4(b) and 5(A)(b) of the statement of claim in that the sum of RM151,361.98 is owing to the plaintiff. It is a clear admission on the part of the defendant. A plain and unequivocal language cannot be considered as a statement of non-admission or a statement of non-denial. Bluntly put, the defendant has by way of their pleadings – their statement of defence, admitted

to the plaintiff's claim of RM151,361.98. In *Esso Malaysia Bhd v. Hills Agency (M) Sdn Bhd & Ors* [1994] 1 MLJ 740, in construing the effect of an admission to the affidavit evidence, Idris Yusoff J had this to say at p. 752 of the report:

> What is more damaging in this case is that the defendants go to the extent of admitting paras 3 and 4 of the plaintiffs' affidavit – thereby obviating the necessity for the plaintiffs to provide further proof to substantiate their averment.
>
> Admissions are the strongest evidence possible and even a wrong construction of a document will be assumed to be correct in view of the admission.

A *fortiori* an admission by way of pleadings are formal admissions and cannot be easily explained away (*Ruby Investment (Pte) Ltd v. Candipark Pte Ltd* [1989] 3 MLJ 396). It must be recalled that the defendant did not file any affidavit in reply to encl. 22. Yip Wan Kai's affidavit in support in encl. 22 makes for an interesting reading pleasure and it brings the brunt of the whole matter onto the shoulders of the defendant, so to speak. At para. 4 of encl. 22, Yip Wan Kai deposed as follows:

> 4. I verily believe and state that the Defendant had vide both paragraphs 4 and 8 of the Statement of Defence admitted the claim made by the Plaintiff for the sum of RM151,361.98 as at 15/8/1999.

And at para. 5 of encl. 22, Yip Wan Kai further deposed as follows:

> 5. Based on the said clear admission of facts, I am advised by the Plaintiff's solicitors and verily believe based on the same that a judgment ought to be entered against the Defendant for the said sum of RM151,361.98 (as at 15/8/1999) without waiting for the determination of any other question between the parties.

Now, it is trite law that when one party makes a positive assertion upon a material issue, the failure of his opponent to contradict it is usually treated as an admission by him of the fact so asserted. Thus, all the allegations of the plaintiff in the plaintiff's affidavit in support in encl. 22 must be deemed to be admitted (*Aseam Credit Sdn Bhd v. Eminent Avenue Sdn Bhd* [2002] 7 CLJ 465). Even a general denial in an affidavit in reply is insufficient to dispute the averments in the plaintiff's affidavit (*Ban Hin Lee Bank Bhd v. Long Hua Corp Sdn Bhd & Ors* [2000] 6 CLJ 1). The position is even graver, as in this appeal, where there is no affidavit in reply filed at all by the defendant. We do not know the defence of the defendant in regard to the plaintiff's claim for RM151,361.98. At any rate, the defendant is bound by their pleadings and cannot improve on their pleadings (*Pembinaan V-Jaya Sdn Bhd v. Binawisma*

Development Sdn Bhd [1987] 2 CLJ 446; [1987] CLJ (Rep) 823). In the context of a winding-up petition, in the case of *Eastool Industries Sdn Bhd v. Getfirms Electronics (M) Sdn Bhd* [2001] 6 CLJ 151, 169 I had this to say:

> The notice of demand showed the debt to be at RM40,336.44 but the respondent admitted owing the petitioner the sum of RM26,936.44 and this admission was certainly fatal and this court had no choice but to allow the petition in encl 2. This was a classic case where the respondent admitted part of the debt, …

Even in a summary judgment application, judgment can be entered for part of the debt where there is no triable issue in respect of that part of the debt (*Huo Heng Oil Co. (E.M.) Sdn. Bhd. v. Tang Tiew Yong* [1987] 1 MLJ 139).

It is germane to mention that an application under O. 27 r. 3 of the RHC can be made "without waiting for the determination of any other question between the parties". In the context of the present appeal, the defendant has clearly admitted to the plaintiff's claim of RM151,361.98 and there is no point delaying the matter. A speedy judgment should be given to the plaintiff and that is the main object of the said Order.

Conclusion

For the reasons as adumbrated above, I must dismiss the defendant's appeal in encl. 33 with costs.