

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

[2024] SGHC 225

Originating Claim No 589 of 2023 (Registrar's Appeal No 136 of 2024)

Between

(1) Eurofins Mechem Pte Ltd

... Claimant

And

(1) Quek Sze Wei
(2) Labtechnic Testing Services
Pte Ltd

... Defendants

GROUND OF DECISION

[Civil Procedure — Summary judgment — Appellant seeking to resile from
factual concession]

TABLE OF CONTENTS

INTRODUCTION.....	1
WHETHER EUROFINS ESTABLISHED A <i>PRIMA FACIE</i> CASE	5
WHETHER EUROFINS HAD PROVEN LOSS	5
WHETHER THERE WERE TRIABLE ISSUES	6
WHETHER MR QUEK ESTABLISHED A FAIR OR REASONABLE PROBABILITY OF <i>BONA FIDE</i> DEFENCE.....	10
WHETHER EUROFINS HAD PROVEN LOSS OR COLLECTIVE FRAUD	10
WHETHER THE ADMISSIONS MADE IN QUEK’S 1 ST AFFIDAVIT COULD BE RELIED ON	11
CONCLUSION.....	14

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Eurofins Mechem Pte Ltd
v
Quek Sze Wei and another

[2024] SGHC 225

General Division of the High Court — Originating Claim No 589 of 2023
(Registrar's Appeal No 136 of 2024)
Kwek Mean Luck J
29 August 2024

2 September 2024

Kwek Mean Luck J:

Introduction

1 In SUM 1103/2024 of HC/OC 589/2023 (“SUM 1103”), the Assistant Registrar (“AR”) granted the Claimant, Eurofins Mechem Pte Ltd (“Eurofins”), partial summary judgment on its claim against the 1st Defendant, Mr Quek Sze Wei (“Mr Quek”), for Mr Quek to pay Eurofins damages in the sum of \$131,535. The AR’s decision was mainly premised on factual admissions made by Mr Quek.

2 In RA 136/2024 (“RA 136”), Mr Quek appealed against the AR’s decision. He raised an assorted range of arguments, key of which was that there were triable issues and that his factual admissions were made in the context of an injunction hearing for the same action, and hence could not be relied on in a hearing for summary judgment. After considering the parties’ submissions, I

dismissed the appeal and affirmed the partial summary judgment. I set out my detailed reasons below.

Factual and procedural background

3 Mr Quek was the General Manager (“GM”) of Eurofins from around 2021 to 5 September 2023. Eurofins’ case was that while Mr Quek was serving as GM and director of Eurofins, he acquired a competitor, Labtechnic Testing Services Pte Ltd (“LT”) (the 2nd Defendant) and made arrangements for 12 of Eurofins’ employees (the “12 Employees”) to resign and join LT.

4 Mr Quek made the following admissions in his 1st affidavit dated 13 October 2023 (“Quek 1st Affidavit”):

[42] ... I therefore coordinated and instructed the Six Employees, along with Cher Ming, Kishen, Hanafi and Norefendi to backdate their resignation letters to June or July 2023 to create the impression that they had already finished serving their requisite notice periods. ...

[43] For Yang Yang, his resignation letter was not backdated and was duly submitted by him to the HR department on or around the same date as his resignation letter (4 July 2023). Yang Yang requested to end his employment earlier on 15 July 2023 (abridging his notice period), and I instructed the HR department to grant his request and waive the need for him to pay the equivalent salary in lieu of notice for the abridged notice period.

[44] For Garette, I instructed him to send me his resignation notice by email and he did so by an email dated 30 June 2023 (time-stamped 4.22 pm). I then instructed the HR department to terminate Garette’s employment with immediate effect i.e. on 30 June 2023, by paying him the requisite salary in lieu of notice, so that he would not need to serve his notice period.

[93] ... I fully acknowledge and admit that, whilst I was an employee and/or director of Eurofins Mechem at the material time, I should not have done the following actions, which I am regretful for: ...

c. Coordinating and instructing the relevant employees to backdate their resignation letters so that they could avoid serving their notice periods in full. ...

5 Eurofins sought partial summary judgment on the basis of these admissions, pursuant to [37(c)] of the Statement of Claim (Amendment No. 1) dated 7 February 2024 (“SOC”):

37. As a result of the 1st Defendant’s breaches of contractual and/or fiduciary duties and/or inducement of breach of the Eleven Employees’ and Garette Lee’s employment contracts, the Claimant has suffered, and continues to suffer, loss and damage

...

(c) loss caused in the sum of the Eleven Employees’ (save for Lim Yang Yang’s) salary in lieu of their respective notice periods which they would otherwise have had to pay if their resignation letters were not falsely backdated, loss caused in the sum of Lim Yang Yang’s salary in lieu of his notice period which he would otherwise have had to pay, loss caused in the sum of Garette Lee’s salary in lieu of his notice period which he would otherwise have had to pay and loss caused in the sum of Garette Lee’s salary which the 1st Defendant wrongfully caused the Claimant to pay to Garette Lee, as follows:

Name of Employee	Last Drawn Monthly Salary (S\$)	Shortfall of Notice Period	Total (S\$)
Johnny Phoa	7,400	3 months	22,200
Paddy Lee Pei Lei	6,000	2 months	12,000
Tan Swee Heng	4,200	2 months	8,400
Leow Wen Yuan	3,850	2 months	7,700
Lim Zi Wei	10,000	2 months	20,000
Muhammad Asri bin Mohamad	2,876	2 months	5,752

Lim Cher Ming	1,545	2 months	3,090
Kishen Kumar Pillai s/o Thanabal	2,600	2 months	5,200
Muhammad Hanafi Bin Abd Malek	2,000	2 months	4,000
Norefendi Abu Hasan Sakry	2,575	2 months	5,150
Lim Yang Yang	3,700	49 days (2 months less 11 days from 4 to 15 July 2023)	6,043
Garette Lee	8,000	4 months (i.e. notice that Garette Lee ought to have given plus payment that Garette Lee instead received for being terminated)	32,000
<u>TOTAL</u>			<u>131,535</u>

Grounds of Appeal

6 Mr Quek raised two main grounds of appeal.

- (a) First, Eurofins had not established a *prima facie* case for partial judgment, as it had not proven that Mr Quek caused it to suffer loss.
- (b) Second, Mr Quek had established a fair or reasonable probability of a *bona fide* defence.

7 Accordingly, he ought to be given permission to defend without any conditions. Alternatively, he should be given conditional leave to defend, on payment of \$130,000 into court.

Whether Eurofins established a *prima facie* case

8 Under the first ground of appeal, Mr Quek raised a range of arguments, which fall under two categories:

- (a) first, arguments submitting that Eurofins had not proven loss; and
- (b) second, arguments alleging that there were triable issues.

Whether Eurofins had proven loss

9 Under the first category (alleging that Eurofins had not proven loss), Mr Quek made two arguments.

- (a) First, Eurofins had not proven the loss falling under [37(a)] of the SOC (loss of business revenue) and [37(b)] of the SOC (loss from costs of replacing employee headcount). These had to be read together with the claim under [37(c)] of the SOC. I found this to be without merit. Partial summary judgment was only awarded in respect of [37(c)] of the SOC. O 9 r 17(1)(b) of the Rules of Court (2021 Rev Ed) provides that the Court may grant summary judgment in respect of a “particular part of a claim”. [37(a)] and [37(b)] of the SOC relate to completely separate heads of claims. Mr Quek submitted that the heads of claims were related, as Eurofins also relies on the backdating of resignation letters to claim for losses arising from the lack of time to find suitable employee

replacements. However, while certain facts may give rise to separate heads of claim, that does not make the heads of claim the same.

(b) Second, Eurofins had a legal burden to prove loss suffered in respect of the 12 Employees but did not issue any claim against them, when they owed the primary responsibility to Eurofins to properly serve their notice of resignation. This argument was also without merit. The 12 Employees' wrongful acts may give rise to causes of action by Eurofins against them, but Eurofins also had separate causes of action against Mr Quek for breach of contractual and fiduciary duties. Eurofins was within its rights to choose to sue Mr Quek.

Whether there were triable issues

10 Under the second category of Mr Quek's arguments, he submitted that there were three sets of triable issues.

11 First, Mr Quek submitted that there were triable issues in relation to:

- (a) whether Eurofins knew or ought to have known that the resignation letters from the employees were backdated; and
- (b) whether Eurofins nonetheless waived the notice periods that they were entitled to as employer.

12 It was held by the Court of Appeal in *Olivine Capital Pte Ltd v Chia Chin Yan* [2014] 2 SLR 1371 ("*Olivine*") at [43] that:

a fresh defence that has not been pleaded cannot be relied on by the defendant in [summary judgment] proceedings *unless* the defence is amended *or unless* the case is an exceptional one where the court concerned is of the view that there are good reasons to permit reliance on such a fresh defence (for instance, if the fresh defence strikes at the heart of the court's powers ...)

13 None of these purported defences were pleaded by Mr Quek. Nor was this case an exceptional one in the vein of *Olivine*'s exposition.

14 In addition, these alleged triable issues, were based on Mr Quek's bare assertions. He did not adduce any evidence, direct or indirect, to suggest that Eurofins knew or ought to have known that the resignation letters were backdated or that Eurofins waived the notice periods. It is trite law that a fair probability of a *bona fide* defence will not be established by a bare assertion on the part of the defendant. Rather, the defendant "must adduce some evidence, direct or indirect, to support the bare assertions made in his affidavit and mere logical possibility alone is insufficient": *Lim Oon Kuin and others v Ocean Tankers (Pte) Ltd (interim judicial managers appointed)* [2022] 1 SLR 434 (CA) ("*OK Lim*") at [22].

15 At the hearing, counsel for Mr Quek orally introduced a new submission, which was that Eurofins actually received the resignation letters from one of the employees earlier than the date Eurofins claimed. Reference was made to the letter of Eurofin's Mr Adrian Ng ("Mr Ng"), acknowledging Mr Johnny Phoa's ("Mr Phoa") resignation letter.¹ There, Mr Ng started his acknowledgment letter to Mr Phoa by saying "We refer to your resignation letter dated 03 June 2023". Mr Quek submitted that this meant that Eurofins received the hard copy of the resignation letter from Mr Phoa on 3 June 2023, and not 30 August 2023, which was the date that Eurofin's Ms Sarah Oon ("Ms Oon") testified to.²

16 I had difficulty accepting this argument. There was nothing in the letter to suggest that Mr Phoa's resignation letter was received on 3 June 2023. Mr

¹ Claimant's Bundle of Documents dated 21 June 2024 ("**CBD**") at p 1057.

² Ms Sarah Oon's 2nd affidavit dated 31 May 2024 at [6].

Ng's acknowledgement letter was dated 1 September 2023. The phrase that Mr Quek relied on, simply stated that the letter was dated 3 June 2023. It did not state nor imply that the hard copy of the letter was received by Eurofins on 3 June 2023. In addition, Mr Quek himself admitted at [42] of his 1st affidavit that he gave instructions to 10 employees, including Mr Phoa, to backdate their resignation letters to June or July 2023 to create the impression that they had already finished serving their notice periods. Mr Phoa filed an affidavit but chose not to state in his affidavit when he handed over his resignation letter to Eurofins. He did not reply to dispute Ms Oon's evidence that his letter was received on 30 August 2023.

17 This submission alleging a triable issue over the date that Mr Phoa's resignation letter was received, was hence contrary to both Mr Quek's and Ms Oon's evidence. It was also unsupported by any evidence from Mr Phoa or Mr Quek. Counsel for Mr Quek acknowledged that this was a bare assertion.

18 Second, Mr Quek submitted that there are triable issues on:

- (a) whether Mr Quek had oversight of Eurofin's human resource department ("HR Department");
- (b) whether Eurofin's Mr Neeraj Garg ("Mr Garg") informally took over oversight of the HR Department from around June 2023, and officially from July 2023 onwards;
- (c) whether six employees each made their own decision to resign from Eurofin's employment; and
- (d) whether Eurofin's HR Department could have, and should have, conducted their own inquiry into Mr Lim Yang Yang's (Mr Lim) or Mr Garette Lee's ("Mr Lee") resignation.

19 There was evidence from Eurofin’s Mr Garg, that Eurofin only found out about the resignation of the employees on 25 August 2023. The anomalies in the resignation dates were discovered after the conduct of investigations that took place after this.³

20 In addition, in relation to Mr Lim, Mr Quek admitted that it was he who instructed the HR Department to grant Mr Lim’s request to abridge his notice period. In relation to Mr Lee, Mr Quek also admitted that he had, as then-GM, ordered the HR Department to waive Mr Lee’s contractual requirement and to compensate him. Eurofins adduced an email from Mr Quek where he instructed a Eurofins staff that “Although [Mr Lee’s] official notice indicates his last day as 30th August 2023, I have decided to conclude his service with immediate effect considering the nature of his role and the associated risk factors.”⁴

21 The second set of triable issues which Mr Quek alleged, were also based on bare assertions. Mr Quek did not adduce any evidence to support them. As set out above, it has been held in *OK Lim* at [22] that a fair probability of a *bona fide* defence will not be established by a bare assertion from the defendant.

22 For completeness, I found that whether the six employees made their own decision to resign from the Claimant’s employment, was not material to the claim on which partial summary judgment was given, which pertained instead to Mr Quek’s conduct in instructing and co-ordinating the backdating of the employees’ resignation letters.

³ Mr Neeraj Garg’s 1st affidavit dated 11 October 2023 at [15]-[28].

⁴ CBD at p 1207.

23 The third set of triable issues that Mr Quek raised, was whether Mr Lim and/or Mr Lee acted fraudulently to deceive Eurofins as pleaded at [24A] of Eurofins’ Reply and Defence to Counterclaim (Amendment No. 1) dated 20 March 2024 (“RDC”).

24 I found that it was not material to Eurofins’ claim under [37(c)] of the SOC, whether Mr Lim or Mr Lee acted fraudulently. What was material was Mr Quek’s conduct, and whether that led to a breach of his employment contract with Eurofins or a breach of the fiduciary duties he owed to Eurofins. The evidence of such conduct was drawn from Mr Quek’s own admissions.

25 In summary, I found that Mr Quek had not raised any of the triable issues alleged.

Whether Mr Quek established a fair or reasonable probability of *bona fide* defence

26 Mr Quek’s second main ground of appeal was that he had established a fair or reasonable probability of a *bona fide* defence. Under this ground of appeal, Mr Quek raised arguments falling under two categories.

(a) First, he argued that Eurofins had not proven loss / collective fraud.

(b) Second, he argued that the admissions made in his 1st affidavit should not be relied on for purposes of summary judgment.

Whether Eurofins had proven loss or collective fraud

27 Under the first category of arguments, Mr Quek made two submissions.

(a) First, that there was no evidence of loss to Eurofins in respect of “business and operations being adversely impacted”. I found no merit to this, since partial summary judgment was not granted in respect of such losses but in relation to those set out at [37(c)] of the SOC (see [9(a)] above).

(b) Second, that while Eurofins made allegations of collective fraud involving Mr Quek and the other employees at [24A] of Eurofins’ RDC, there was no evidence of fraud on the part of the employees. I also found no merit to this. What was material to the partial summary judgment, was not whether there was fraud on the part of the other employees, but Mr Quek’s conduct, which he had admitted to in his 1st affidavit.

Whether the admissions made in Quek’s 1st Affidavit could be relied on

28 This led to Mr Quek’s second category of submissions, which was that the admissions in his 1st affidavit should not be relied on for the purposes of the partial summary judgment. Mr Quek submitted that this was because the admissions there were for the purposes of an application to set aside the injunction against Mr Quek, and not as admission to the claims made by Eurofins. Moreover, the court had already responded to Mr Quek’s conduct by dismissing the application, to dismiss the injunction. Eurofins should not be entitled to double relief on the same facts. In addition, Mr Quek amended his original Defence and Counterclaim dated 16 October 2023 (“DCC”) to remove the material admissions made therein. By Eurofins’ actions, they must be taken to have accepted these amendments, and should have been precluded from referring to the paragraphs removed from the original DCC.

29 It was not necessary for me to deal with parties’ submissions on whether Eurofins had accepted Mr Quek’s amendments to his DCC. This was because his material admissions remained in evidence through Quek’s 1st Affidavit.

30 Mr Quek did not provide any authority or principled reason why the factual admission there could not be relied on. Indeed, there is a line of cases, which counsel for Mr Quek did not dispute, which establish the principle that factual admissions made in earlier proceedings, can be relied on in later proceedings of the same action.

(a) In *Recovery Vehicle 1 Pte Ltd v Industries Chimiques Du Senegal* [2021] 1 SLR 342 (CA) the appellant had “conceded, as a matter of fact” that its claim under certain contracts were time-barred under Senegalese law in aid of its argument that Singapore was the *forum conveniens* to try the dispute (at [107]). The Court of Appeal recognised that the appellant “might not have appreciated that this concession would have a consequential impact on the merits” but held that the failure to appreciate the impact of its concession “does not change the analysis.” This is because “[a] factual concession remains a factual concession irrespective of the nature of the legal argument under which it was made” (at [110], emphasis added). The result was that the appellant’s attempt to resile from its concession on appeal was held to be an abuse of process (at [111]).

(b) It was held in *Bayerische Landesbank Girozentrale v Sng Chee Hua* [2000] 1 SLR(R) 587 (HC) at [12], in the context of O 14 r 2 of the Rules of Court (1997 Rev Ed) that at the hearing of a summary judgment application, “all the affidavits which have been received in evidence may be read and in coming to a decision any evidence in support of or

in opposition to the application may be taken into account whether it be contained in an affidavit filed by one party or the other.”

31 In addition, other decisions have found that factual averments made in separate proceedings, may give rise to an estoppel by representation.

(a) In *Lee Siong Kee v Beng Tiong Trading, Import and Export (1988) Pte Ltd* [2000] 3 SLR(R) 386 (CA), the court considered factual admissions made in a set of legal proceedings between the respondent and a third party, to raise an estoppel in a separate suit between the appellant and the respondent.

(b) In *Independent State of Papua New Guinea v PNG Sustainable Development Program Ltd* [2016] 2 SLR 366 (HC) (“PNG”), the court found that admissions in separate proceedings could be relied on, if they were not made in response to a notice to admit facts served in another action (at [127], [129]).

32 Mr Quek also referred to his 4th affidavit dated 17 May 2024 to submit that reliance should not be placed on the admissions made in his 1st affidavit. At [17] of his 4th affidavit, Mr Quek says that his 1st affidavit “was prepared under significant time pressures to set aside an injunction. Some of the points may not have been complete or accurate.”

33 The AR rightly observed that Mr Quek’s explanation in his 4th affidavit was “almost a meaningless statement” since it did not explain which admissions in his 1st affidavit were purportedly “incomplete or inaccurate”.

34 In any case, courts “treat averments in legal proceedings as statements which are not made lightly and from which one cannot easily resile”; *PNG* at

[142]. In *PNG*, the defendant sought to resile from earlier-made admissions on the basis that they were erroneous. The court refused to disregard these admissions, given that the defendant was: (a) unable to furnish evidence to demonstrate why they were erroneous, and (b) did not clearly explain the circumstances from which the allegedly erroneous admissions arose; at [130]–[136]). In this case, Mr Quek has not furnished any credible explanation as to why his admissions should be disregarded.

35 In addition, Mr Quek’s position in RA 136, was contradictory to the position he took earlier before Lai Siu Chiu SJ in his application to set aside the injunction granted to Eurofins. His solicitors then, had characterised Mr Quek’s statements on affidavit as “unequivocal words” and “unequivocal admissions” and that as a result, Eurofins had a “clear path to obtain compensatory relief” and that the law would ensure that Mr Quek “will compensate [Eurofins] fully for the acts he has admitted to”.⁵ Lai SJ nevertheless declined to set aside the injunction, and found that the ex-employees “were in cahoots with [Mr Quek] to deliberately conceal their intended joining of [LT]” and that “in the case of Garette Lee, his conduct aided by [Mr Quek] was egregious”.⁶

36 Taking into account the above, I found that Mr Quek had failed to raise a fair probability of a *bona fide* defence.

Conclusion

37 At the hearing, Mr Quek asked that in the alternative, he be given conditional leave to defend on payment of \$130,000 into court. It has been held by the Court of Appeal in *Akfel Commodities Turkey Holding Anonim Sirketi v*

⁵ CBD at 752, 781.

⁶ CBD at 782-783.

Townsend, Adam [2019] 2 SLR 412 (CA) at [51], that conditional leave is warranted where “the defendant’s evidence is barely sufficient to rise to the level of showing a reasonable probability of a *bona fide* defence” and where “the evidence is such that the plaintiff has very nearly succeeded in securing judgment”. In this case, Mr Quek had made key admissions in his 1st affidavit, which remain on record, and the triable issues he alleged were based on bare assertions. The threshold for conditional leave was far from met. Consequently, I found that conditional leave was not warranted.

38 For the above reasons, I dismissed the appeal and affirmed the partial summary judgment. Eurofins was awarded costs of \$20,000 plus disbursements of \$483.95.

Kwek Mean Luck
Judge of the High Court

Victor Leong, Jordan Tan and Lim Jun Heng (Audent Chambers
LLC) for the claimant;
Sean La’Brooy (Vita Law LLC) for the first defendant.