

DISPUTE RESOLUTION

Party Autonomy, Forensic Advantage and Public Interest: A Judicial Lodestar Illuminating Withdrawal of Applications

Introduction

How should a litigant beat an elegant retreat in a court application when circumstances change? When a litigant seeks the court's permission to withdraw an application, permission is generally granted on the principle that no litigant should be compelled to proceed against its will. What circumstances would justify refusing permission or granting it on terms?

In *EC-Council Pte Ltd v WPP Singapore Pte Ltd* [2026] SGHC 125, the General Division of the High Court considered whether a party that had brought an interlocutory application for summary determination of questions of contractual construction could withdraw the application without judicial determination (based on supervening circumstances) and against its opponent's wishes. The Court held that withdrawal should be permitted subject to payment of costs thrown away, unless tantamount to an abuse of process and the prejudice to the opposing party cannot be fairly met by imposing terms. Permission may nonetheless be refused if the litigation engages a public interest transcending the parties' private interests.

The Court permitted the claimant to withdraw its application in this case because withdrawal would not deprive the defendant unfairly of a forensic advantage or subject it unfairly to a forensic disadvantage. Further, the Court declined to exercise its power to determine the defendant's question of construction on its own accord.

As only the second reported decision on the governing provision in the Rules of Court 2021, the decision is a lodestar in illuminating the principles governing withdrawal of originating processes, interlocutory applications and prayers within a single application pending trial. It also elucidates the Court's power to determine questions of law or document construction on its own accord and the relationship between this power and the general rule in favour of permitting withdrawal.

The claimant was successfully represented by Gregory Vijayendran SC and Nicole S Ng of Rajah & Tann Singapore LLP.

Brief Facts

The claimant, EC-Council Pte Ltd, provides professional certification in information security. The defendant, WPP Singapore Pte Ltd, contracts to provide strategic marketing and advertising services on behalf of

related entities. The substantive dispute in the litigation concerns a contract under which the defendant and related entities undertook to provide such services to the claimant.

The claimant filed a single application pending trial, including a prayer for summary determination of questions concerning a clause in the contract. In its reply affidavit, the defendant proposed that the Court should first determine a different question concerning another clause.

The summary determination application was part-heard. Before the defendant was to make its oral submissions, the defendant amended its defence and counterclaim with the Court's permission. In response, the claimant made consequential amendments to its reply to the defence. The defendant's amendment application and the domino effect it created were the supervening circumstances at play.

The claimant thus sought permission to withdraw its application, contending that the amendments had shifted the terrain of the dispute and rendered the parties' questions no longer suitable for summary determination. The defendant opposed withdrawal, saying that the Court should determine the defendant's (not the claimant's) question. The defendant also argued that, even if permission was granted, the Court should determine the defendant's question on its own accord.

Decision of the Court

The Court stated the governing principle as a general rule, subject to a qualification and an exception. Applying these principles, the Court allowed the claimant to withdraw its application.

General rule in favour of withdrawal

The general rule is that a party who initiates litigation, or a discrete process within litigation, will be permitted to withdraw it if prepared to pay the opposing party's costs thrown away by the withdrawal. Three policy considerations underpin the general rule:

1. Party autonomy: a claimant has the liberty to choose when and how to commence litigation, and when and how to walk away.
2. Rectitude in the court's decisions: compelling an unwilling litigant to argue a position that it has resolved to withdraw risks a judicial determination reached on incomplete arguments half-heartedly advanced, which is not conducive to rectitude of decision.
3. Conserving judicial resources: this scarce, finite and public resource should not be wasted by forcing a party to take a dispute to a judicial determination.

Qualification to the general rule

Permission will be refused if withdrawal would amount to an abuse of process and the prejudice caused by the abuse cannot fairly be met by imposing terms on the withdrawal in addition to a costs order. This qualification has two forms:

1. where withdrawal would confer on the withdrawing party an unfair forensic advantage. The touchstone is unfairness that makes the withdrawal an abuse, and not merely an inconvenience or an added expense; and
2. where withdrawal would deprive the opposing party unfairly of a forensic advantage or subject it unfairly to a forensic disadvantage.

A further condition applies where the qualification points towards compelling a determination on the merits, rather than merely preserving the proceedings as a vehicle for the opposing party. To compel a determination is safe only where the applicant's change of heart will not impair the quality of the court's decision-making. The paradigm case is where all arguments were completed before the applicant formed an intention to withdraw.

The Court also explained how the qualification applies in view of *res judicata*. Interlocutory applications capable of yielding a *res judicata* include an application for summary judgment, an application to strike out an entire pleading and enter judgment accordingly, and an application for summary determination of questions of law or document construction. If the applicant wins, the court's decision founds a *res judicata*. But if the respondent wins, this may be only because a summary determination is inappropriate. Therefore, the respondent can seldom argue that withdrawal of such an application would deprive it of an opportunity to vindicate itself with a binding determination. Withdrawal alters only the route to a binding determination, *i.e.*, summary or after trial.

Even where the qualification is engaged, the court usually grants permission to withdraw on terms tailored to prevent the prejudice to the opposing party, while relieving the initiating party of the greater prejudice of being forced to contest a point it wishes to withdraw. Refusal of permission is reserved for the rare case in which the prejudice is real and neither a term nor an order for costs will cure it.

The Court observed that there is a strong argument that the court may impose terms even where what is withdrawn is an interlocutory application rather than an action. The Ideals in the Rules of Court 2021 ("**Ideals**") favour a calibrated response of imposing terms on withdrawing a summons.

Exception to the general rule

Permission to withdraw may be refused to advance a public interest transcending the parties' private interests. The paradigm case is a committal application.

Application

The Court held that the general rule applied and that the defendant did not satisfy one of the qualifications or the exception. The claimant no longer wished to have its questions decided summarily and would rather have them tried. The Court held that a party in that position is not to be compelled to press its application to a conclusion it does not want.

Regarding the qualifications, the defendant had gained no forensic advantage of which withdrawal would unfairly deprive it.

1. First, the defendant's alleged advantage was the opportunity to have the defendant's own question determined summarily. That, however, was not an advantage won through the claimant's decision to bring the application: the defendant's question was raised in its reply affidavit.
2. Second, the defendant had not objectively demonstrated a clearly superior case. Its oral submissions had not been heard, and the Court had expressed no view even provisionally on the merits or on the suitability of the questions for summary determination.
3. Third, the claimant's stated reasons for withdrawing the application did not mirror the defendant's reasons for resisting it. The defendant's position was that its question was the more suitable question to decide first. The claimant's reason for withdrawing, by contrast, was that the pleading amendments and its consequential reliance on extrinsic material had rendered the questions unsuitable for summary determination.

Refusal of permission to withdraw the application was not safe and worthwhile. The claimant was contending that the amendments and its consequential reliance on extrinsic material had unsettled the basis on which the questions could be decided summarily. To compel a determination would be to decide on an incomplete argument and a contested record, with the applicant no longer a motivated advocate for the relief.

Further, withdrawal would not impose an unfair future disadvantage that costs could not cure. Although the defendant had incurred real costs and the application was well advanced, its loss was only the loss of an interlocutory vehicle, not of a substantive action. The defendant remained free to bring its own application under O 9 r 19 of the Rules of Court 2021, subject to the Court's control of interlocutory applications. Withdrawal merely postponed the binding determination of the dispute to trial.

Finally, the Court held that there was no public interest transcending the parties' private interests.

Court's Own-accord Power

The Court declined to determine the defendant's question on its own accord. The own-accord power is a case-management tool to serve the just and efficient disposal of the action, not a vehicle for a party to keep an application alive against the applicant's will. Further, it would be an odd use of the power to embark, over the objection of the party to be bound, on a contested preliminary inquiry into the admissibility and effect of disputed evidence, when the same issue would be decided at trial. The efficient course most consonant with the Ideals was to allow the matter to be tried once, on a complete record.

Comments

We make three closing observations on this case.

First, this decision usefully restates and instructively develops the principles governing the withdrawal of originating processes and interlocutory applications under the Rules of Court 2021. A party opposing withdrawal must meet a high threshold of showing prejudice of forensic advantage or disadvantage that cannot be cured by imposing terms or an order for costs. The decision is especially important for applications for summary judgment, applications to strike out an entire pleading and enter judgment accordingly, and applications for summary determination of questions of law or construction of documents, where the respondent will often have difficulty showing that withdrawal would deprive it of an opportunity to vindicate itself with a binding determination.

Secondly, if a party wishes its own questions to be determined summarily, it should put those questions before the court in its own application rather than riding on the coattails of an opponent's application.

Thirdly, the Court's approach to the own-accord power is notable for its judicial posture in considering the Ideals. That power exists to further proper case management, but it cannot be used to hollow out the principle that a party is not to be compelled to litigate against its will. The court will also consider countervailing case-management reasons in its calculus.

For further queries, please feel free to contact our team.

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Contact

COMMERCIAL LITIGATION

Gregory Vijayendran SC

PARTNER

D +65 6232 0438

gregory.vijayendran@rajahtann.com

Please feel free to also contact Knowledge Management at RTApublications@rajahtann.com.

Regional Contacts

Cambodia

Rajah & Tann Sok & Heng Law Office

T +855 23 963 112 | +855 23 963 113
kh.rajahtannasia.com

China

**Rajah & Tann Singapore LLP
Representative Offices****Shanghai Representative Office**

T +86 21 6120 8818
F +86 21 6120 8820

Shenzhen Representative Office

T +86 755 8898 0230
cn.rajahtannasia.com

Indonesia

Assegaf Hamzah & Partners**Jakarta Office**

T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

Lao PDR

Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239
la.rajahtannasia.com

Malaysia

Christopher & Lee Ong

T +603 2273 1919
F +603 2273 8310
www.christopherleeong.com

Myanmar

Rajah & Tann Myanmar Company Limited

T +951 9253750
mm.rajahtannasia.com

Philippines

**Gatmaytan Yap Patacsil Gutierrez & Protacio
(C&G Law)**

T +632 8248 5250
www.cagatlaw.com

Singapore

Rajah & Tann Singapore LLP

T +65 6535 3600
sg.rajahtannasia.com

Thailand

Rajah & Tann (Thailand) Limited

T +66 2656 1991
th.rajahtannasia.com

Vietnam

Rajah & Tann LCT Lawyers**Ho Chi Minh City Office**

T +84 28 3821 2673 | +84 28 3521 2832

Hanoi Office

T +84 24 3267 6127 | +84 24 3267 6128
vn.rajahtannasia.com

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