

Lim Lee Chin ... **1st Appellant**
Syarikat Perniagaan Malar Setia ... **2nd Appellant**
(sued as a firm)

AND

Emily Ong Chiew Shih ... **1st Respondent**
Livingson Ong John Heng ... **2nd Respondent**

(Court of Appeal of Brunei Darussalam)
(Civil Appeal No. 3 of 2010)

Before: Mortimer, P.; Davies and Rogers, JJ.A.
20th May, 2010.

*Pleading – non-admission by defendant to allegation of fact within defendant’s knowledge – inappropriateness – arguably evasive
Particulars sought where interrogatories more appropriate – importance of risk of increasing cost and delay by requiring further interlocutory steps*

Ms. Melissa Ang of Messrs. CCW Partnership for the Appellants.
Ms. Subrina Tan of Messrs. Sandhu & Co. for the Respondents.

Cases cited in the Judgment:

Weinberger v Inglis [1918] 1 Ch 133.

Davies, J.A.:

This purports to be an appeal from a judgement of the learned Chief Justice dated 6 February 2010 upholding a judgement of the Senior Registrar dated 2 November 2009 in which the learned Chief Justice made the following orders:

“1. that the Defendants do provide the following further and better particulars of:

Paragraph 1 of the Defence

a. the name and address of the driver of the motor vehicle bearing registration number BY 8119 at the time of the said collision;

b. the name and address of the owner of the motor vehicle bearing registration number BY 8119 at the time of the said collision;

2. that the Defendants to provide the above further and better particulars within two (2) weeks from the date of the Order.

3. that if the Defendants fail to provide the further and better particulars as ordered, the Defendants claims under paragraph 1 of the Defence shall be deemed to be struck out; and

4. that the costs of this appeal and the application before the Registrar be awarded to the Plaintiff to be taxed if not agreed.”

These orders were plainly interlocutory. Consequently no appeal lies from them to this Court without the leave either of a High Court Judge or this Court: Supreme Court Act, section 20 (2) (f). No such leave has been granted.

When this was pointed out to counsel for the appellants, counsel applied for leave to appeal. After some discussion with counsel, the course which this Court then adopted was to proceed to hear the matter fully on the basis that, if the decision of the learned Chief Justice was plainly wrong, we would grant leave and allow the appeal; otherwise we would refuse the application for leave.

The question which arose before the Senior Registrar and the learned Chief Justice arose from the pleadings in an action for damages for personal injury arising from a motor vehicle accident. In their Statement of Claim the plaintiffs, who are the respondents in this Court, alleged:

“2. At all material times, the 1st Defendant was the driver of a motor vehicle bearing registration number BY 8119 (hereinafter referred to as "BY 8119") whereas the 2nd Defendant was the owner of BY 8119.”

In their defence the defendants said:

*“1. The 1st and 2nd Defendants ("**Defendants**") make no admission as to paragraph...2 of the Statement of Claim.”*

The defendants did not say that they did not know and therefore could not admit who was the owner or driver of motor vehicle registration number BY 8119. On the contrary, during the hearing before the Chief Justice, counsel for the defendant admitted that she knew of the identity of the driver of that motor vehicle at the relevant time. It is plain that, notwithstanding that knowledge, the defendants were putting the plaintiffs to proof of those facts. The first question for consideration here is whether it was permissible for them to do that.

Order 18, rule 12 of the Rules of the Supreme Court, which is headed “**Admissions and denials**” provides as follows:

“(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.

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

(3) Subject to paragraph (4) every allegation of fact made in a statement of claim... which the party on whom it is served does not intend to admit must be specifically traversed by him in his defence..... and a general denial of such an

allegation, or a general statement of non-admission of them, is not a sufficient traverse of them.

.....”

These provisions are in the same form as those which existed in England and Wales prior to the coming into force of the Civil Procedure Rules 1998. Rules on this topic had been in much that form for more than a century before then. Yet well before that date the Courts of England and Wales were emphasising the need for candidness in pleadings and criticising pleadings which tended to be evasive.

Read literally, the above rules permitted a defence of the kind pleaded by the defendants here and no doubt there was a time when a pleading of this kind was considered acceptable. See *Weinberger v Inglis* [1918] 1 Ch 133. However it may be seriously doubted whether that is any longer the case.

In respect of the pre-1998 rules in England and Wales the general practice, as explained in *Odgers on Civil Practice*, 24th Edition, 1996 at 9.20 was as follows:

“The distinction generally observed is that a party denies any matter which, if it had occurred, would have been within his own knowledge, while he refuses to admit matters which are alleged to have occurred behind his back.”

That practice has been imposed as an obligation by the 1998 Rules in England and Wales which permit a non-admission by a defendant only where he has no knowledge about the allegation in issue. See Civil Procedure Rules, rule 16.5 (1) (b). Whilst it cannot be said that that is an obligation under Order 18, rule 12 it is strongly arguable that, in the light of the more recent emphasis by courts on frankness in pleadings, a pleading which makes merely a non-admission in circumstances in which the party pleading that non-admission must know the truth or falsity of the allegation to which that pleading is addressed, is an evasive pleading which may be struck out or treated as an admission.

However it is not necessary to consider this question further because the plaintiffs, rather than seeking one or other of those orders, sought the particulars ordered to be given by the Chief Justice in the orders referred to above. As mentioned earlier, the question before this Court now is whether those orders were plainly wrongly made.

It may be thought that it would have been more appropriate than seeking particulars for the plaintiffs to have sought answers to interrogatories to each defendant:

“Who was the driver of motor vehicle registered number BY 8119 at the time referred to in the Statement of Claim?”

“Who was the owner of motor vehicle registered number BY 8119 at the time referred to in the Statement of Claim?”

Had those questions been asked there is no doubt that the defendants would have been obliged to answer them. Moreover they could have been ordered by the Senior Registrar or by the learned Chief Justice and to be answered instanter and could now be so ordered by this Court. The only real consequence of any of those orders would have been and would be to incur unnecessary additional cost and delay.

The learned Chief Justice was plainly aware that to do that would have resulted in an unnecessary delay in the prosecution of the action and in an unnecessary increase in costs; and that the same result could be satisfactorily achieved without that delay or increase in costs by making the orders sought. The course which the learned Chief Justice took was, in our view, an entirely sensible one.

There is no substantive merit in an appeal if this Court were to grant the leave sought. It therefore should be refused.

Orders

1. Refuse leave to appeal;
2. Amend paragraph 4 of the Order of the Chief Justice to delete the words “the Defendants’ claims under”;
3. Unless application is made to this Court for some other order within 14 days of today, order that the applicant pay the respondents cost of this application and appeal.

Mortimer, P.

Davies, J.A.

Rogers, J.A.