

Mahadeer Mohamed
Nasreen Jaya Sdn Bhd

... 1st Plaintiff
... 2nd Plaintiff

AND

Ubayathullah Haja Mohideen
Zainah Binti Haji Muhammad
Awangku Muhammad Dinie Hazwan
Bin Pengiran Haji Sahari
Sri Azlina Sdn Bhd
Standard Chartered Bank
Gallant Sdn Bhd

... 1st Defendant
... 2nd Defendant
... 3rd Defendant

... 4th Defendant
... 5th Defendant
... 6th Defendant

(BY ORIGINAL ACTION)

BETWEEN

Ubayatullah Haja Mohideen

...Plaintiff

AND

Mahadeer Mohamed
Syed Isak Mohammed Ali

...1st Defendant
...2nd Defendant

(BY COUNTERCLAIM)

(High Court of Brunei Darussalam)
(Civil Suit No 39 of 2021)

Muhammed Faisal Bin PDJLD DSP Kol(B) Haji Kefli, J.C

Date of Ruling: 18th August 2025.

Headnote: *Civil Procedure – appeal against two registrar’s decision – (i) granting leave to amendment defence and counterclaim, including joinder of third party – (ii) direction that expert evidence proceed via single joint expert – plaintiffs opposed amendments as late, inconsistent with earlier pleadings, introducing new causes of action, prejudicial, and potentially time-barred – defendants argued amendments were necessary to ventilate real issues, supported by equitable and limitation exceptions, and permissible under O.20 r.5 SCR – registrar found no irremediable prejudice and allowed amendments – plaintiffs also challenged joint expert order, contending right to own expert and simultaneous exchange of reports – defendants supported registrar’s discretion under O.40 r.2(1) SCR for efficiency and proportionality – court held registrar acted within powers in both decisions – appeals dismissed and registrar’s orders affirmed.*

Mr Zheng Onn of Messrs CCW & Partners is representing the 1st Plaintiff, 2nd Plaintiff and Syed Isak Mohammed Ali (2nd Defendant).

Mr Eugene Loh of Messrs Yusof Halim & Partners representing the 1st Defendant, 2nd Defendant, 3rd Defendant & 4th Defendant.

Ms Evelyn Lee of Messrs Y C Lee is representing the 5th Defendant.

Ms Sarrah Azizah of Messrs ZS Legal is representing the 6th Defendant.

Cases cited:

Liff v Peasley [1980] 1 All ER 623

Lim Kok Kim V Lim Lian Poy, Lee Eng Ching and Lim Teng Huan [1997] 2 JCBD

Abdul Razak Sheikh Mahmood & Anor v Bhupinder Singh [2012] 3 MLJ 348

Alloy Consolidated Sdn Bhd v Dato' Dr Hj Adam bin Harun [2011] 5 MLJ 655

Esben Finance Ltd v Wong Hou-Liang Neil [2022] 1 SLR 136

Capitane Le Goff, The [1981] 1 Lloyds'Rep 322

Kincaid v AER Lingus Teoranta [2003] 2 IR 314

O'Flynn v Health Service Executive and Ors [2022] IECA 83

Ecology Support Services v Patel [2018] EWHC 3717 (Comm)

Statutes:

Order 20 rule 5 of the Supreme Court Rules

Order 34A rule 1(1) of the Supreme Court Rules

Order 40 of the Supreme Court Rules

Order 40 rule 1(1) of the Supreme Court Rules

Order 40 rule 2 of the Supreme Court Rules

Order 40 rule 2(1) of the Supreme Court Rules

Section 27 of the Limitation Act

Section 38 of the Limitation Act

Section 47 of the Limitation Act

Section 48 of the Limitation Act

RULING

Muhammed Faisal, J.C.:

I Introduction

1. This is an appeal against two decisions of the Registrars:
 - (i) Against Senior Registrar's Kamaliah Fadhillah decision allowing the 1st to 4th Defendants (D1-D4) to amend their Defence and Counterclaim, including the addition of a Third Party; and
 - (ii) Against Senior Registrar's Nur Amalina decision dismissing the Plaintiffs' application for mutual exchange of expert reports and to order that expert

evidence in the matter be adduced by way of a joint expert appointed by agreement of the parties.

2. Issues for Determination

- Whether the Registrar erred in allowing the amendment to the Defence and Counterclaim, including the joinder of a Third Party.
- Whether the Registrar erred in dismissing the Plaintiffs' application for mutual exchange of expert reports.

II Procedural Background

3. The Plaintiffs commenced this suit in 2021. The original Statement of Claim was subsequently amended. The claim primarily alleges misappropriation of funds, wrongful removal of the 1st Plaintiff as a director of the 2nd Plaintiff company, conspiracy, breach of fiduciary duty, and defamation. The Defendants initially filed their Defence and Counterclaim in 2022, which was then substantially amended in 2024. The latest amendment includes:

- A Counterclaim by the 1st Defendant asserting beneficial ownership of shares in the 2nd Plaintiff company;
- Allegations of unjust enrichment and misrepresentation against the Plaintiffs and Syed Isak;
- A Third-Party Notice joining Syed Isak to the suit.

4. In response, the Plaintiffs objected, arguing inter alia that the amendments sought were excessive, late, and would prejudice the trial.

5. Senior Registrar Kamaliah Fadhilillah granted the Defendants leave to amend their Defence and Counterclaim and to issue the third-party notice. The Plaintiffs now appeal both rulings, which includes Senior Registrar Nur Amalina's decision that the parties should appoint a single joint expert to address forensic accounting issues.

III Amendment of Defence and Counterclaim and Addition of Third Party

The Plaintiffs Positions

6. The Plaintiffs opposed the Defendants' application to amend the Defence and to file a Counterclaim on several substantive and procedural grounds. They contended that the proposed amendments introduced an entirely new cause of action at a late stage of the proceedings. Whereas the original Defence focused primarily on denials and factual disputes concerning the Plaintiffs' claims, the amended Defence sought to advance a new positive case—namely, that the 1st Defendant is the beneficial owner of the 2nd Plaintiff company, and that the shares were held on trust by the 1st Plaintiff

and another. This, the Plaintiffs argued, amounted to a fundamental shift in the litigation, transforming the Defendants from mere respondents into claimants seeking declarations and financial relief. Such a change would prejudice the fair conduct of the proceedings and undermine the efficient administration of justice.

7. The Plaintiffs also pointed to inconsistency between the original Defence and the proposed amendments. They highlighted that the Defendants had, in their earlier pleadings, either denied or not asserted the very facts upon which the amended Defence now sought to rely. This, in the Plaintiffs' submission, undermined the credibility of the new pleading and suggested it was a belated attempt to make up a defence in response to the Plaintiffs' case. Furthermore, the Plaintiffs emphasised that they had already filed their Reply and Defence to the original Counterclaim, and had taken concrete steps in preparation for trial. Allowing a significant amendment at this juncture, they argued, would result in procedural prejudice, additional costs, and further delay in a matter that had already seen multiple rounds of pleadings.
8. The Plaintiffs objected to the inclusion of Syed Isak as a Third Party, contending that it unnecessarily complicated the proceedings. They submitted that this addition, based on alleged trust arrangements not previously pleaded, would introduce further factual disputes and procedural steps, including the need for third-party directions. In their view, this procedural complication would not only delay resolution but also distract from the main issues between the original parties. Moreover, they argued that the claim involving Syed Isak could have been brought much earlier, and its late inclusion now was indicative of the Defendants' lack of diligence and a strategy of piecemeal litigation.
9. It was submitted that amendments which amount to a departure from the original defence, especially were inconsistent, should not be allowed.
10. The Plaintiffs contends that some of the newly introduced claims, particularly those involving alleged beneficial ownership, unjust enrichment, and fraudulent misrepresentation, may be time-barred. In *Liff v Peasley*¹, leave to amend a writ to join a new defendant will not be granted where doing so would defeat a limitation defence that the proposed defendant would have enjoyed if sued separately. It was pointed out that the factual basis of the Counterclaim arises from events said to have occurred as far back as 2012 to 2019. In particular, reference was made to rental payments, control of the business, and financial dealings which predated the institution of this suit by several years. It was submitted that allowing the amendment at this late stage would effectively permit the Defendants to raise causes of action that are potentially out of time under the Limitation Act. The Plaintiffs argues that the presence of such a

¹ *Liff v Peasley* [1980] 1 All ER 623 at 643 – 644, pp 138 – pp139 PBOA (Defence, Counterclaim, Addition of 3rd Pty)

concern adds to the prejudice caused by the proposed amendment, and weighs against its allowance at this stage.

The Defendants Positions

11. The Defendants strongly contended that the proposed amendments to the Defence and the inclusion of a Counterclaim were necessary to allow the real issues in controversy to be fully and fairly ventilated. They argued that litigation should not be constrained by procedural technicalities, particularly where the issues raised in the amendments arises from factual matters that had already been broadly outlined in the original pleadings. The amendments would clarify the parties' respective positions and assist the Court in reaching a just and final determination. It is emphasised that there was no evidence of actual prejudice to the Plaintiffs, especially since the matter had not yet proceeded to trial and the Plaintiffs would have ample opportunity to respond to the amended pleadings.
12. The defendants submitted that amendments should generally be allowed unless they result in injustice that cannot be compensated by costs or other procedural safeguards². The Defendants also relied on *Order 20 rule 5 of the Supreme Court Rules*³(SCR), which expressly empowers the Court to grant leave to amend at any stage of the proceedings so as to determine the real questions in controversy between the parties.
13. Addressing the specific complaint that the Counterclaim introduced a new claim of beneficial ownership, the Defendants submitted that this claim did not arise out of thin air, but was grounded in facts already pleaded or known to the Plaintiffs. They pointed to their longstanding financial support of the 2nd Plaintiff company, including rental payments, assumption of business liabilities, and other indicia of effective control over the company. In their view, the claim for beneficial ownership was a logical consequence of the unfolding evidence and subsequent developments, including the Plaintiffs' own assertion of proprietary control. They maintained that the inclusion of this claim would not fundamentally alter the character of the litigation, but rather crystallise the disputes already inherent in the proceedings.
14. The Defendants, strongly contested the Plaintiffs' characterisation of their claims as time-barred. They submitted that the reliefs sought in the Counterclaim are primarily equitable in nature, including declarations of beneficial ownership, restitution for unjust enrichment, and claims based on fraudulent misrepresentation and are

² **Lim Kok Kim V Lim Lian Poy, Lee Eng Ching and Lim Teng Huan [1997] 2 JCB 170** at pp 172 -173

³ "(5) An amendment may be allowed under paragraph (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the statement." (**Order 20 Rule 5 Supreme Court Rules**)

therefore either exempt from limitation or fall within recognised exceptions under the *Limitation Act (Cap. 14)* (hereinafter referred to as the *Limitation Act*). In support, the Defendants cited *Section 48* of the *Limitation Act*⁴ which excludes claims for equitable relief from the six-year limitation period. Additionally, it was argued that the Counterclaim involves recovery of property held on trust, falling under *Section 27*⁵ of the *Limitation Act*, which exempts actions for the recovery of trust property from limitation.

15. The Defendants also invoked *Section 38* of the *Limitation Act*⁶, submitting that their claim is based on fraud, and that limitation does not begin to run until the fraud was discovered. They argued that the relevant discovery occurred only when the Plaintiffs asserted, through their own claim, beneficial ownership of the shares. Furthermore, the Defendants relied on the doctrine of relation back under *Section 47* of the *Limitation Act*⁷, arguing that even if a limitation period applied, the amendment should relate back to the date of the Writ (19 February 2021), thereby preserving claims dating back to 19 February 2015.

16. Case authorities cited in support included *Abdul Razak Sheikh Mahmood & Anor v Bhupinder Singh*⁸, for the proposition that claims involving declarations of beneficial interest are time barred, and *Alloy Consolidated Sdn Bhd v Dato' Dr Hj Adam bin Harun*⁹, on the principle of relation back. The Defendants also referred to *Esben Finance Ltd v Wong Hou-Liang Neil*¹⁰, a decision of the Singapore Court of Appeal affirming that unjust enrichment claims can be treated as equitable and thereby not subject to limitation.

Findings

17. The Registrar allowed the amendments and the addition of Syed Isak as Third Party, finding that they did not render the original Defence a sham. She was satisfied that the amendments flowed from issues already raised and did not amount to an abuse

⁴ “**S.48.** (1) The following time limits under this Act ... shall not apply to any claim for specific performance of a contract or for an injunction or for other equitable relief.”

⁵ “**S.27.** (1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action —

(a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or

(b) to recover from the trustee trust property or the proceeds of trust property in the possession of the trustee, or previously received by the trustee and converted to his use.”

⁶ “**S.38.** (1) Subject to subsection (3), ...

...the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it...”

⁷ See **Section 47(1) – (6) Limitation Act (CAP 14)**

⁸ **Abdul Razak Sheikh Mahmood & Anor v Bhupinder Singh [2012] 3 MLJ 348** at [64]-[65]

⁹ **Alloy Consolidated Sdn Bhd v Dato' Dr Hj Adam bin Harun [2011] 5 MLJ 655** at pp 655 – 565, pp 665 – pp 666

¹⁰ **Esben Finance Ltd v Wong Hou-Liang Neil [2022] 1 SLR 136** at pp 137 – 138, p 69, pp 171 - 172

of process. Although the changes were substantial, they were not inconsistent with earlier material and could be fairly addressed through an amended Reply.

18. The Registrar also noted that the matter had not yet been fixed for trial and directions had not closed. As such, any prejudice could be managed procedurally, and the Plaintiffs had sufficient opportunity to respond. She considered that the interests of justice favoured allowing the real issues to be ventilated.
19. As for the addition of Syed Isak, his name had appeared frequently in the affidavits and his involvement in the dispute was well-known to all parties. The complexity introduced was, in her view, proportionate and manageable within the scope of the litigation.
20. The principles under *O.20 r.5 SCR*¹¹ favour a liberal approach to amendment where it facilitates a just resolution of the real issues. Prejudice, if any, can be addressed by costs or directions for additional pleadings or discovery. There is no evidence of ambush or abuse of process.
21. An amendment should be allowed if it enables the real dispute to be adjudicated upon, unless it causes prejudice which cannot be compensated in costs.
22. The issue of inconsistency must be viewed in context. The mere fact that a party shifts their case due to newly discovered evidence or clarification does not automatically bar amendment. The amendment here builds on, rather than negates, prior allegations.
23. While I accept that limitation is an important consideration in any amendment application, I am also mindful that the issue of limitation is best determined at trial unless it is plain and obvious that the claim is time-barred. In this case, the Counterclaim appears to be grounded in factual assertions that have already featured in the original Defence or related affidavits. The Defendants have raised strong arguments that the claims fall within exceptions or equitable categories not subject to limitation. Accordingly, I am not satisfied that the amendment ought to be refused on limitation grounds at this stage.
24. I therefore uphold the Registrar's order allowing the amendment and third-party joinder.

IV Expert Evidence – Joint Expert Appointment

The Plaintiffs Positions

25. The Plaintiffs challenge the Registrar's direction that expert evidence should proceed through a single joint expert. They argue that this order unduly restricts their ability

¹¹ *Supra n.2*

to present their case, particularly where serious allegations such as forgery are made. The Plaintiffs assert that they are entitled to appoint their own expert under *Order 40 SCR*¹², and that having independent expert testimony is critical to testing technical findings through adversarial cross-examination. They maintain that requiring agreement on a joint expert's findings, or even relying solely on one opinion, is unsuitable in matters where facts and assumptions are disputed, and could prejudice their ability to advance their claim fully.

26. Further, the Plaintiffs submit that simultaneous exchange of expert reports, should the Court allow individual experts, is the fairer procedure. This seems to be supported by cases such as *The Capitane Le Goff*¹³, *Kincaid v AER Lingus Teoranta*¹⁴ and in *O'Flynn v Health Service Executive and Ors*¹⁵. They argue that sequential exchange would grant the Defendants a strategic advantage, allowing them to tailor their response after seeing the Plaintiffs' report first. The Plaintiffs had already identified and engaged an expert before the Registrar's ruling, and contend that altering the expert procedure at this stage causes disruption to their trial preparations. They view the Registrar's decision as procedurally irregular, particularly when neither party applied for a joint expert.

The Defendants Positions

27. The Defendants, on the other hand, support the Registrar's direction, asserting that she acted squarely within her powers under *Order 34A*¹⁶ and *Order 40 rule 2(1)*¹⁷. They argue that a single joint expert will serve the interests of efficiency, reduce duplication, and avoid conflicting reports. They also contend that since the Plaintiffs bear the burden of proof regarding the alleged forgery, it is appropriate for them to produce their expert report first. This would allow the Defendants to assess whether expert rebuttal is necessary at all, an approach consistent with proportionality and cost-efficiency.

28. They further raise uncertainty as to what precisely the Plaintiffs' expert has examined, whether originals or copies, and whether the issue is verifying the Plaintiff's signature or identifying a forger. Until these matters are clarified, they argue, it would be

¹² "1. (1) In any cause or matter in which any question for an expert witness arises the Court may at any time, on the application of any party, appoint an independent expert or, if more than one such question arises, two or more such experts, to inquire and report upon any question of fact or opinion not involving questions of law or construction." (**Order40 Rule1(1) Supreme Court Rules**)

¹³ *Capitane Le Goff, The* [1981] 1 *Lloyds'Rep* 322 at pp 324 – 325, pp 10 – 11 PBOA (Expert Evidence)

¹⁴ *Kincaid v AER Lingus Teoranta* [2003] 2 *IR* 314 at [*320], pp 23 PBOA (Expert Evidence)

¹⁵ *O'Flynn v Health Service Executive and Ors* [2022] *IECA* 83 at [59] – [60], pp 38 PBOD (Expert Evidence)

¹⁶ "1. (1) Notwithstanding anything in these Rules, the Court may, at any time after the commencement of any proceedings, of its own motion direct any party or parties to those proceedings to appear before it, in order that the Court may make such order or give such direction as it thinks fit, for the just, expeditious and economical disposal of the cause or matter." (**Order 34A Rule1(1) Supreme Court Rules**)

¹⁷ See **Order40 Rule2 Supreme Court Rules**

premature and costly for the Defendants to engage experts. They cite *Ecology Support Services v Patel*¹⁸ in support of sequential disclosure, arguing that simultaneous exchange would generate unnecessary expense and potentially more expert disputes.

Findings

29. I accept that the Plaintiff has raised legitimate concerns; there is strength in the argument that each party has a right to call its own expert, especially where the expert opinion is technical and may be disputed. A party is entitled to test and challenge expert opinion through cross-examination, and this is harder to do with a joint expert. The Registrar's ruling may limit the adversarial ability of the Plaintiff to present its case fully.
30. However, *Order 40 rule 2(1)*¹⁹ does grant the Registrar wide discretion to manage expert evidence, including by limiting the number of experts and directing the use of a joint expert. This discretion is exercisable even where the parties prefer otherwise, provided that it serves the interest of justice and efficiency.
31. In this case, the Registrar acted within the scope of her powers. Her reasons — namely to streamline the proceedings, reduce duplication, and ensure that expert evidence does not unnecessarily delay or complicate trial — are entirely proper objectives consistent with the overriding objective of efficient case management. I therefore find no basis to interfere with the Registrar's exercise of discretion on this issue.
32. Further, the Registrar's order does not permanently bar the Plaintiff from applying to adduce its own expert if circumstances later warrant it. The door remains open if disagreement with the joint expert's report becomes material.
33. I therefore uphold the Registrar's decision. The Plaintiff's concerns are acknowledged and valid in principle, but do not amount to grounds for setting aside a properly exercised discretion.

V Conclusion

34. For the reasons set out above;
- The appeal against the Registrar's decision to allow the amendment and joinder of Third Party is dismissed.
 - The appeal against the Registrar's decision on expert reports is also dismissed.
35. The Registrars' orders are affirmed in full.
36. Orders accordingly.

¹⁸ *Ecology Support Services v Patel* [2018] EWHC 3717 (Comm) at [15]

¹⁹ *Supra n.13*

MUHAMMED FAISAL BIN PDJLD KOL(B) DSP HAJI KEFLI
Judicial Commissioner