

CHEVIOT INDUSTRIES (M) SDN. BHD.

a

v.

LEAN HUP BROTHERS CO.

HIGH COURT MALAYA, KUALA LUMPUR

SITI NORMA YAAKOB J

[CIVIL SUIT NO. C2814 OF 1983]

14 JANUARY 1989

b

CIVIL PROCEDURE: *Application by defendant for extension of time to appeal against decision of Senior Assistant Registrar - Whether failure of solicitor to advise on time limited to file appeal sufficient ground - Whether there are merits in defence.*

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This was an application by the defendant for enlargement of time to file notice of appeal against the decision of the Senior Assistant Registrar allowing an O. 18 r. 19 application on 29 January 1988. Under O. 53 r. 1(3) of the Rules of the High Court 1980, the defendant had 5 days from 29 January 1988 within which to file a notice of appeal, but their solicitors only informed them of this right on 23 February 1988.

The issue raised was whether an oversight or mistake on the part of the defendant's solicitors to advise their client, the defendant, of the time limited to file a notice of appeal is sufficient ground for granting an extension of time to file a notice of appeal.

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The defendant also pleaded that they had merits on their dispute for which an extension of time should be granted.

Held:

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[1] Failure to advise the defendant would not have prevented the solicitors from filing a notice of appeal if they wanted to. The fact that they did not, can only mean that they had considered that the defendant had no merits to appeal in the first place.

[2] Since the defendant's allegation of non-delivery or denial of liability have all been rebutted by the documentary evidence, I do not consider that the defendant had shown any merits on their defence.

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[Application dismissed with costs.]

Cases referred to:

Tan Chai Heng v. Yeo Seng Choon [1981] 1 MLJ 271

Cheah Teong Tat v. Ho Gee Seng & Ors. [1974] 1 MLJ 31

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Legislation referred to:

Rules of the High Court 1980, O. 53 r. 1(3)

For the defendant/applicant - Saran Singh; M/s. Saran Singh & Co.

For the plaintiff/respondent - W.H. Tang; M/s. Arifin & Partners

JUDGMENT

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Siti Norma Yaakob J:

The proceedings before me were in the nature of an application by the defendant for enlargement of time to file a notice of appeal against the decision of the Senior Assistant Registrar allowing an O. 18 r. 19 application on 29 January 1988.

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- a* The cause of action in this suit is for goods sold and delivered arising out of transactions that happened in 1982. The plaintiff filed the writ and statement of claim on 4 October 1983, amended it on 7 March 1985 and the defendant entered appearance on 22 April 1985 and filed their statement of defence and counterclaim on 30 May 1985. Almost 2 years later, on 9 March 1987, the plaintiff filed an O. 18 r. 19 application to have the statement of defence struck out and to sign final judgment for the sum claimed, interests and costs.
- b* Pending the hearing of this O. 18 r. 19 application, the plaintiff had also on 11 June 1987, filed an application for leave to file a reply and defence to the defendant's counterclaim which was allowed by consent on 11 June 1987.
- The plaintiff's O. 18 r. 19 application was postponed five times before it was finally disposed off on 29 January 1988 when the Senior Assistant Registrar allowed the application and entered judgment against the defendant for the sum claimed, interests and the costs.
- c* Before the Senior Assistant Registrar, the defendant were represented by Messrs Jagjit Singh & Co., the same firm of solicitors that wrote to the defendant on 23 February 1988 informing them that summary judgment had been entered against them on 29 January 1988 and requesting them to call upon the solicitor in charge of the matter on 3 March 1988 at 4.30 p.m. It is this letter that the defendant relied to contend that their solicitors had failed to advise them of the time limit to file a notice of appeal and because of their own solicitors' mistake, they have now been deprived of their right to appeal against the Senior Assistant Registrar's order.
- d* In *Tan Chai Heng v. Yeo Seng Choon* [1981] 1 MLJ 271, it was held that in an application for an extension of time, there must be circumstances which include "instances which warrant the exercise of the Court's discretion in favour of the application.
- e* In *Cheah Teong Tat v. Ho Gee Seng & Ors.* [1974] 1 MLJ 31, it was held that such circumstances include
- f* instances where the applicant has been misled by the other side or where some mistake has been made in the registry itself and he has been misled by an officer of the Court or where delay in filing notice has been caused by unforeseen circumstances like sudden death or inevitable accident or sudden serious illness or something of that kind which reasonably account for the delay. Under any of these circumstances, extension of time may be allowed.
- Under O. 53 r. 1(3) of the Rules of High Court, the defendant had 5 days from 29 January 1988 within which to file a notice of appeal, but their solicitors only informed them of this right on 23 February 1988.
- g* The issue is whether an oversight or mistake on the part of the defendant's solicitors to advise the client, the defendant, of the time limited to file a notice of appeal is sufficient ground for granting an extension of time to file a notice of appeal. I answer this issue in the negative as failure to advise the defendant could not have prevented the solicitors for filing a notice of appeal if they wanted to. The fact that they did not, can only mean that they had considered that the defendant had no merits to appeal in the first place.
- h* The defendant have also pleaded that they have merits on their defence for which an extension of time should be granted.
- The cause of action is for goods sold and delivered in respect of transactions conducted in 1982. Pursuant to a distributorship agreement dated 1 November 1980 signed between the parties, the defendant placed orders for the goods and their defence is that on 10 May 1982,
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they were notified of the plaintiff's refusal to supply the goods and on 21 May 1982, the plaintiff unilaterally terminated the distributorship agreement. By doing so the defendant contended that the plaintiff had breached their obligations under the distributorship agreement and the defendant have a counterclaim in damages for such breach to be assessed.

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From their affidavits, the plaintiff have exhibited the relevant invoices and delivery orders to prove that the goods ordered by the defendant had been supplied on credit term of 75 days and had been acknowledged by the defendant to have been received between 28 February 1982 to 5 May 1982, before the termination of the distributorship agreement.

b

Since the defendant's allegation of non-delivery or denial of liability have all been rebutted by the documentary evidence, I do not consider that the defendant had shown any merits on their defence.

If at all there is any merit to the defendant's contention that the plaintiff had breached the distributorship agreement, this is a separate issue which they have raised in their counterclaim and for which no order was made. This can be separately tried.

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For reason given above, I had refrained from exercising my discretion in this application for extension of time and had accordingly dismissed it with costs.

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Also found at [1989] 1 CLJ 909

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